

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

V.

Case No. 3:19-cv-00134-HRH-KFR

ACTION SECURITY, INC., and SCOTT HENKE,<sup>1</sup>

## Defendants.

## **REPORT AND RECOMMENDATION**

The Court recommends that Plaintiff's Motion for Sanctions to Dissolve Defendant Action Security, Inc. be **GRANTED**. The Court finds that Defendants have repeatedly violated the orders of the District Court, have consistently engaged in actions designed to frustrate the execution and intent of the District Court's orders, and have willfully refused to abide by their obligation to pay taxes due on income made during their business operations. Because Defendants through their actions have demonstrated that they are unwilling or unable to abide by the District Court's orders, and because there is no reasonable lesser sanction that can be imposed in this case to compel compliance, the Court recommends the following:

- a permanent injunction against Defendants;

<sup>1</sup> The Court notes that Defendant Action Security has never made an appearance in this action and that corporations may not proceed *pro se*, rather they must be represented by counsel. Nonetheless, the Court finds that Defendant Action Security is properly before this Court. The Court has given Defendant Action Security ample opportunity to seek counsel and make an appearance in this action. In addition, Mr. Henke stipulated on behalf of Defendant Action Security to the injunction in this case (thereby properly joining Defendant Action Security) and is considered its privy or actor-in-concert under Rule 65(d)(2)(C). Furthermore, the government properly served Defendant Action Security by delivering the complaint and summons to its registered agent, Mr. Henke, in the District of Alaska. At that point, the Court's personal jurisdiction over Defendant Action Security solidified.

- 1 • that Defendants cease accepting new clients within 30 days, cease  
2 operating within 120 days, and conspicuously display at Action  
3 Security's entrance notice of the injunction;
- 4 • that Mr. Henke not be permitted to directly or indirectly own, control,  
5 manage, operate, or serve as an officer or director of any business until  
6 the earlier of (1) his successful petition for relief if certain conditions  
7 are met after one year from the injunction; or (2) 10 years; and
- 8 • that Mr. Henke be incarcerated for one or more days if he violates the  
9 injunction, with periods of incarceration increasing for successive  
10 violations, based on the seriousness of those violations.<sup>2</sup>

## 12 I. PROCEDURAL BACKGROUND

13 On May 13, 2019, Plaintiff, United States of America, filed a Complaint for  
14 Permanent Injunction against Defendants Action Security, Inc. and its owner, Scott  
15 Henke, seeking to enjoin Defendants from continuing to pay wages to employees  
16 without paying the associated federal employment taxes.<sup>3</sup> Plaintiffs properly served  
17 Defendants; however, Defendants did not file an Answer or make a timely  
18 appearance.<sup>4</sup> As a result, Plaintiff filed a Motion for Entry of Default against  
19 Defendants.<sup>5</sup> The Clerk of Court entered an Order of Default and on September 18,  
20 2019, Plaintiff filed a Motion for Default Judgment.<sup>6</sup> On September 23, 2019, Plaintiff  
21 filed a Stipulation for Entry of Permanent Injunction against Defendants and  
22 withdrew its Motion for Entry of Default Judgment.<sup>7</sup>

23 The Court issued a Judgment and Permanent Injunction against Defendants on  
24 September 25, 2019, with detailed directions to be regularly and consistently

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26 <sup>2</sup> Doc. 87 at 31-32.

27 <sup>3</sup> Doc. 1.

28 <sup>4</sup> Docs. 8-9.

<sup>5</sup> Docs. 12-13.

<sup>6</sup> Docs. 14-16.

<sup>7</sup> Docs. 17-18.

1 completed by the parties (hereinafter “Injunction Order”).<sup>8</sup> The Court retained  
2 jurisdiction over the case for a five-year period to ensure compliance with the  
3 injunction.

4 One year later, Plaintiff filed a Motion for Order to Show Cause, alleging that  
5 Defendants failed to comply with the requirements of the Injunction Order.<sup>9</sup>  
6 Defendants did not timely respond.<sup>10</sup> The Court solicited input from Plaintiff as to  
7 how to proceed given Defendants’ failure to respond to the Court’s order directing  
8 response,<sup>11</sup> and Plaintiff requested appointment of a receiver.<sup>12</sup> The Court ordered  
9 Defendants to appear on March 22, 2022, “to show cause why they should not be  
10 held in contempt for their failure to comply with the [Injunction Order].”<sup>13</sup>  
11 Defendants failed to appear.<sup>14</sup>

12 On March 24, 2022, the Court granted Plaintiff’s contempt motion, and the  
13 Court appointed Lisa Fink to act as a receiver (hereinafter “Appointment Order”).<sup>15</sup>  
14 Ms. Fink’s duties included ensuring Defendants complied with the Injunction Order  
15 and overseeing Defendants’ business operations.<sup>16</sup> The District Court’s Appointment  
16 Order also gave Ms. Fink broad access to Defendants’ business and authority over its  
17 operations.<sup>17</sup> The Appointment Order also ordered Defendants’ compliance,  
18 enjoining them from interfering with Ms. Fink in the exercise of her duties.<sup>18</sup>

19 Three months later, Ms. Fink filed a status report as directed by the District  
20 Court.<sup>19</sup> Ms. Fink documented Mr. Henke’s noncompliance with the District Court’s  
21 Injunction and Appointment Orders.<sup>20</sup> Ms. Fink concluded that the receivership was

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23 <sup>8</sup> See Doc. 19.  
24 <sup>9</sup> Doc. 20.  
25 <sup>10</sup> Doc. 24.  
26 <sup>11</sup> Doc. 21.  
27 <sup>12</sup> Docs. 26-27.  
28 <sup>13</sup> Doc. 28.  
29 <sup>14</sup> Doc. 35.  
30 <sup>15</sup> Doc. 37.  
31 <sup>16</sup> *Id.* at 2-5.  
32 <sup>17</sup> *Id.* at 5-8.  
33 <sup>18</sup> *Id.* at 9.  
34 <sup>19</sup> Doc. 39.  
35 <sup>20</sup> Doc. 39-1 at 1.

1 “economically unfeasible” due to the “necessary cleanup and overhaul” the  
2 receivership required and the fact that she had “already spent 25 hours [working  
3 with Defendants] but accomplished little due to [Mr.] Henke’s unresponsiveness.”<sup>21</sup>

4 On July 12, 2022, Plaintiff filed a Motion for Sanctions to Dissolve Defendant  
5 Action Security, Inc.<sup>22</sup> Mr. Henke requested additional time to respond to this  
6 motion, which the Court granted.<sup>23</sup> Mr. Henke then filed a “Motion for Dismissal of  
7 Motion” requesting that Plaintiff’s Motion to Dissolve his company not be granted,  
8 accompanied by an affidavit where he took issue with Ms. Fink’s status report.<sup>24</sup>  
9 Plaintiff replied and the Court set an evidentiary hearing.<sup>25</sup>

10 In the meantime, Ms. Fink filed a second status report, warning that she did  
11 not think the receivership was sustainable given Mr. Henke’s non-compliance and  
12 avoidance, and Defendants requested time to secure counsel.<sup>26</sup> The District Court  
13 granted Defendants’ motion and reset the evidentiary hearing to November 30,  
14 2022.<sup>27</sup> On November 30, 2022, Mr. Henke made an oral motion to continue the  
15 evidentiary hearing.<sup>28</sup> The Court directed the parties to confer and propose  
16 alternative dates for an evidentiary hearing. The Court then referred the case to this  
17 Court for purposes of the evidentiary hearing and post-judgment proceedings.<sup>29</sup>

18 This Court held an evidentiary hearing on February 28 and March 1, 2023.<sup>30</sup>  
19 At the hearing Plaintiff called Mr. Henke, IRS Revenue Officer (“RO”) Terence  
20 Johnson, Ms. Fink, and Ms. Fink’s assistant, Elizabeth Barr.<sup>31</sup> Defendants called Mr.  
21 Henke.<sup>32</sup> At the conclusion of the hearing this Court ordered the parties to file post-

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23 <sup>21</sup> *Id.*

24 <sup>22</sup> Doc. 40.

25 <sup>23</sup> Docs. 41-42.

26 <sup>24</sup> Doc. 43.

27 <sup>25</sup> Docs. 45-46.

28 <sup>26</sup> Docs. 48-50.

29 <sup>27</sup> Doc. 51.

30 <sup>28</sup> Doc. 55.

31 <sup>29</sup> Doc. 61.

32 <sup>30</sup> Docs. 65-66.

33 <sup>31</sup> Docs. 65-67.

34 <sup>32</sup> *Id.*

1 hearing supplemental briefing with proposed findings of fact and conclusions of  
2 law.<sup>33</sup>

3 In accordance with the Appointment Order, Ms. Fink filed her third and final  
4 status report on March 22, 2023.<sup>34</sup> In this report, Ms. Fink gave notice of her  
5 resignation due to Defendants' unwillingness to communicate or otherwise work  
6 with her or her team as instructed by the Court.<sup>35</sup>

7 **II. STATEMENT OF FACTS**

8 **a. An Employer's Duty to Report and Pay Taxes**

9 **i. 941 Employment Taxes**

10 Employers must withhold Federal Insurance Compensation Act ("FICA" or  
11 Social Security) taxes, Medicare taxes, and income taxes from their workers'  
12 paychecks.<sup>36</sup> The employer then has until the end of each calendar quarter – either  
13 March 31, June 30, September 30, or December 31 – to forward its workers' taxes to  
14 the Internal Revenue Service ("IRS").<sup>37</sup> Until then, the employer holds the money  
15 "in trust for the United States."<sup>38</sup>

16 An employer must also pay its own Social Security and Medicare taxes each  
17 quarter.<sup>39</sup> Together with its workers' tax withholdings, these payments are called  
18 "employment taxes." An employment tax return, IRS Form 941, comes due a month  
19 after the quarter ends.<sup>40</sup> The IRS uses this return to determine the employment taxes  
20 owed for that quarter – and thus, whether the employer paid in full.

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24 <sup>33</sup> Doc. 74.

25 <sup>34</sup> Doc. 73.

26 <sup>35</sup> *Id.* The Appointment Order stated that the Receiver may file notice of her resignation;  
however, such resignation shall not be effective until the Court appoints a successor.

27 <sup>36</sup> See 26 U.S.C. §§ 3102, 3402.

28 <sup>37</sup> See 26 C.F.R. § 31.6071(a)-1(a); *see also* February 28, 2023 Evidentiary Hearing Transcript  
49:7-8 (hereinafter "Feb. 28 Tr.").

<sup>38</sup> 26 U.S.C. § 7501.

<sup>39</sup> 26 U.S.C. §§ 3111, 3301.

<sup>40</sup> See 26 C.F.R. § 31.6071(a)-1(a); *see also* Feb. 28 Tr. at 48:21-22.

## ii. 940 Unemployment Taxes

Employers must separately pay Federal Unemployment Tax Act (“FUTA”) taxes equal to 6% of their employees’ wages.<sup>41</sup> Depending on the amount owed, unemployment taxes must be paid either quarterly (every three months) or annually (by January 31).<sup>42</sup> An unemployment tax return, IRS Form 940, must also be filed by the payment deadline.<sup>43</sup>

### iii. 1120 Corporate Income Taxes

Taxable corporations must file an annual corporate income tax return, IRS Form 1120.<sup>44</sup>

**b. Defendants' Business Falters and Fails to Comply with its Obligations to the IRS.**

Mr. Henke's parents founded Action Security, Inc. in 1963.<sup>45</sup> The firm was incorporated on or about November 25, 1974, and was administratively dissolved by the State of Alaska on or around October 1, 2016. The firm then began operating under the name "Action Security." Action Security provides locksmith and security services. Mr. Henke acquired shares of the company over the years and eventually became its sole owner, director, president, secretary, shareholder, and treasurer in 2016.<sup>46</sup>

Between 2010 and 2016, Mr. Henke litigated his divorce proceedings, which resulted in him being able to keep Action Security, but required him to make a payout to his ex-wife that he reported to be more than \$2 million.<sup>47</sup> The result, according to Mr. Henke, was “financial ruin”<sup>48</sup> for him and Action Security, which led to the

<sup>41</sup> See 26 U.S.C. § 3301.

<sup>42</sup> See 26 C.F.R. § 31.6302(c)-3(a).

<sup>43</sup> See 26 C.F.R. § 31.6071(a)-1(a).

<sup>44</sup> See 26 C.F.R. § 1.6012-2(a); see also Feb. 28 Tr. at 51:25-52:4.

<sup>45</sup> March 1 Evidentiary Hearing Transcript 50:20-23 (hereinafter "Mar. 1 Tr.")

<sup>46</sup> Feb. 28 Tr. at 10:25-11:2; Mar. 1 Tr. at 50:25-51:6.

<sup>47</sup> Mar. 1 Tr. at 51:5-6; 5:21-6:7.

48 *Id.* at 51:8-12.

1 closure of five Action Security offices throughout the State of Alaska and dismissal  
2 of 30 employees.<sup>49</sup>

3 In 2014, during the pendency of his divorce, Action Security ceased paying  
4 employment taxes or filing returns.<sup>50</sup> Defendants began spending taxes withheld  
5 from their employees' paychecks on their own expenses instead of forwarding the  
6 money to the IRS and they ceased filing or paying their own federal taxes.<sup>51</sup>

7 **c. The IRS Attempts to Recover Money Owed to It.**

8 Between June 2016 and March 2019, the IRS undertook myriad efforts to bring  
9 Defendants into tax compliance, giving them repeated warnings of what might  
10 happen if they did not comply. Specifically, the IRS:

- 11 1. advised Mr. Henke on how to follow the Internal Revenue Code;
- 12 2. recorded multiple federal tax liens against Action Security between  
13 June 13, 2016, and March 27, 2019;
- 14 3. served notices of intent to levy Action Security's financial accounts  
15 and levied on Action Security's bank accounts and credit card  
16 merchant account;
- 17 4. assessed trust fund recovery penalties against Mr. Henke, under 26  
18 U.S.C. § 6672, for multiple quarterly periods, making him personally  
19 liable for Action Security's unpaid 941 employment taxes withheld  
20 from the wages of its employees;
- 21 5. threatened to sue for an injunction if Defendants did not file returns  
22 and pay taxes; and
- 23 6. delivered an IRS Letter 903 and Notice 931 to Defendants on October  
24 12, 2017, which placed Action Security on notice that the IRS might

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27 <sup>49</sup> *Id.* at 5:24–6:1.  
28 <sup>50</sup> Feb. 28 Tr. at 113:1–8.  
51 *Id.* at 161:10–22.

pursue a suit for civil injunction if Action Security continued to fail to comply with its employment tax obligations.<sup>52</sup>

None of this persuaded Defendants to file their tax paperwork or pay the IRS and Action Security's tax debt continued to grow.<sup>53</sup> As a result, on May 13, 2019, Plaintiff filed a Complaint to enjoin Defendants from continuing to pyramid their federal tax debt.<sup>54</sup> To that point, Mr. Henke and Action Security had failed to report or pay employment taxes (Form 941) from the fourth quarter of 2014 onward; unemployment taxes (form 940) for 2015 and 2017 onward; and corporate income taxes for fiscal year 2014 onward.<sup>55</sup>

Defendants initially ignored Plaintiff's lawsuit.<sup>56</sup> After the Clerk entered a default judgment against Defendants,<sup>57</sup> the government notified Mr. Henke in writing of the default judgment and suggested in a letter that the parties resolve the pending case with a stipulated injunction rather than a default judgment.<sup>58</sup> The letter included a proposed stipulation and injunction.<sup>59</sup>

After approximately one week of negotiation over its terms, and the exchange of three drafts, Mr. Henke stipulated to the injunction.<sup>60</sup> The District Court entered the Stipulated Injunction on September 25, 2019.<sup>61</sup> The Stipulated Injunction included the following terms:

1. Defendants shall properly withhold from their employees' paychecks appropriate amounts of income tax and FICA and Medicare taxes;

<sup>52</sup> Doc. 40 at 4-5; Doc. 15 at 4.

<sup>53</sup> Feb. 28 Tr. at 43:11-20.

<sup>54</sup> Doc. 1. The term "pyramiding" refers to the accumulation of tax liability from each successive failure to remit payments. One cause for a pyramiding tax debt can be the lack of profit or capital for operating costs, forcing the business owner to use funds that should be deposited into employment tax trust accounts to pay bills, resulting in an accumulation (or "pyramiding") of tax liabilities. See IRS Publication IR-2004-47 (Apr. 5, 2004), available at <https://www.irs.gov/pub/irs-news/ir-04-047.pdf>.

<sup>55</sup> See Doc. 68, Ex. 4 at 1-89.

56 Docs. 8, 9.

57 Doc. 14.

<sup>58</sup> Doc. 16; Doc. 16-1 at 2.

<sup>59</sup> See Doc. 16-1 at 5-6.

<sup>60</sup> Docs. 16-1, 17.

61 Doc. 19.

1        2. Defendants shall deposit in an appropriate bank employee taxes,  
2        employer FICA and Medicare taxes, and FUTA taxes;  
3        3. Defendants shall sign and deliver to the IRS on the first of every month  
4        an affidavit stating that the required income, FICA and Medicare, and  
5        FUTA taxes had been properly deposited for each pay period during the  
6        prior month;  
7        4. Defendants shall timely file IRS Forms 941 and 940 and provide a copy  
8        of the filed forms to the IRS within five days of filing;  
9        5. Defendants shall pay all required outstanding liabilities due on each tax  
10        return filed pursuant to the District Court's order;  
11        6. Defendants shall not pay other creditors prior to paying amounts owed  
12        to the IRS;  
13        7. Defendants shall not pay employee salaries except through an approved  
14        payroll services provider;  
15        8. Defendants shall permit periodic inspection by the IRS of its books and  
16        records; and  
17        9. Mr. Henke shall inform the IRS if he forms, incorporates, or works in a  
18        managerial capacity for any other business.<sup>62</sup>

19        The District Court told Defendants that failure to abide by the Stipulated  
20        Injunction could result in “a motion for an order to show cause why Defendants  
21        should not be held in contempt[.]”<sup>63</sup> The District Court stated that possible sanctions  
22        for violating the order included being ordered to “cease doing business immediately”  
23        and being “permanently enjoined from forming, incorporating, or owning another  
24        business entity and working for any business in [any tax-related capacity.]”<sup>64</sup>

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27        <sup>62</sup> *Id.* at 2-4. The Court adopted the language contained in the Proposed Order submitted by  
the parties with their Stipulation for Entry of Permanent Injunction. *See Doc. 17.*

28        <sup>63</sup> *Doc. 19* at 5.

29        <sup>64</sup> *Id.*

1                   Mr. Henke did little to nothing to comply with the Stipulated Injunction. On  
2 October 30, 2019, RO Johnson traveled to Anchorage from his duty station in the  
3 Lower 48 to review the terms of the injunction with Mr. Henke.<sup>65</sup> Revenue Officer  
4 Johnson scheduled a follow-up trip to Alaska to meet with Mr. Henke on Tuesday,  
5 November 19; however, after RO Johnson's arrival on Monday, Mr. Henke cancelled  
6 that meeting.<sup>66</sup> When RO Johnson responded that he could meet any day that week,  
7 Mr. Henke said that he was unavailable.<sup>67</sup> A follow-up meeting between RO Johnson  
8 and Mr. Henke never occurred.<sup>68</sup>

9                   For the next two and a half years, Mr. Henke continued to fail to comply with  
10 the injunction. During this period, Mr. Henke and Action Security paid the IRS  
11 exactly twice.<sup>69</sup> Both times were in November 2019 and totaled \$2,563.40.<sup>70</sup> All the  
12 while, Action Security continued operating as a business, paying other expenses like  
13 rent and utilities<sup>71</sup> and withholding its employees' federal tax withholdings. Action  
14 Security did not file any federal tax returns during this period.<sup>72</sup>

15                   Attempts by the government to force compliance by Mr. Henke with the terms  
16 of the injunction were met with avoidance, resistance, and deception. In June 2020,  
17 the government sent a letter to Mr. Henke informing him that he had not paid all  
18 employment taxes for the third and fourth quarters of 2019, filed Action Security's  
19 tax returns, or sent RO Johnson the required documents, all of which were required  
20 under the Stipulated Injunction.<sup>73</sup> Mr. Henke replied that he had submitted the  
21 unemployment tax returns for the second half of 2019 but would be "more than  
22 happy to resend them," and that he would contact RO Johnson in the morning.<sup>74</sup>

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24                   <sup>65</sup> Feb. 28 Tr. at 64:6-12.

25                   <sup>66</sup> *Id.* at 65:1-9.

26                   <sup>67</sup> *Id.* at 65:10-17.

27                   <sup>68</sup> *Id.*

28                   <sup>69</sup> Feb. 28 Tr. at 63:6-64:5.

29                   <sup>70</sup> Doc. 68, Ex. 4 at 2.

30                   <sup>71</sup> Feb. 28 Tr. at 19:2-7.

31                   <sup>72</sup> Doc. 68, Ex. 4 at 1-89; *see also* Mar. 1 Tr. at 46:3-5.

32                   <sup>73</sup> Doc. 20-1 at 2.

33                   <sup>74</sup> *Id.* at 2, 16; *see also* *infra* notes 69-70.

1       Twelve days later, after ignoring the government for four of those days because “the  
2       fish [were] calling,” and after the government threatened to seek an order to show  
3       cause, Mr. Henke finally sent receipts for his two 2019 payments.<sup>75</sup> (Later  
4       accounting would determine that these payments were approximately \$2,000  
5       short.<sup>76</sup>) Mr. Henke also explained that he failed to meet with RO Johnson on  
6       November 19, 2019, because the two of them “got their dates crossed.”<sup>77</sup>

7       Subsequent attempts by the government to communicate with Defendants  
8       went unanswered. On July 20, 2020, the government sent a letter to Mr. Henke  
9       seeking the filing of Forms 941, questioning the sufficiency of the tax payments made  
10       in 2019, and reminding Mr. Henke that RO Johnson was waiting on documents.<sup>78</sup>  
11       The letter also included a table detailing to that point Defendants’ numerous  
12       violations of the Stipulated Injunction.<sup>79</sup> That letter went unanswered.<sup>80</sup>

13       **d. The Court Appoints a Receiver and Warns Defendant of the  
14       Consequences of Failing to Comply.**

15       In October 2020, Plaintiff asked the Court to hold Defendants in contempt of  
16       the injunction.<sup>81</sup> The Court ordered Defendants to respond to the motion within 14  
17       days, and to appear at the contempt hearing, but Defendants did neither.<sup>82</sup> The Court  
18       found Defendants in contempt and appointed a Receiver, Lisa Fink, on March 24,  
19       2022, to ensure Defendants’ compliance with the Stipulated Injunction going  
20       forward.<sup>83</sup>

21       In the Appointment Order, the District Court ordered Defendants to work with  
22       Ms. Fink and enjoined them “from interfering in any manner with the discharge of

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<sup>75</sup> *Id.* at 2, 21, 24.

25       <sup>76</sup> Doc. 68, Ex. 4 at 86.

26       <sup>77</sup> Doc. 20-1 at 3, 24.

27       <sup>78</sup> *Id.* at 3, 37-38.

28       <sup>79</sup> *Id.*

29       <sup>80</sup> *Id.* at 6.

30       <sup>81</sup> Doc. 20.

31       <sup>82</sup> Docs. 21, 24, 28.

32       <sup>83</sup> Docs. 36-37.

1 the Receiver's duties and exercising [of] her authorities.”<sup>84</sup> Among other things, the  
2 Appointment Order granted Ms. Fink keys to and the alarm code for Action Security’s  
3 premises, access to its books and records, and copies of all mail and  
4 correspondence.<sup>85</sup> Additionally, the Court granted Ms. Fink authority to implement  
5 “accounting and control procedures to facilitate the efficient and proper  
6 administration of Action Security.”<sup>86</sup> Like the Stipulated Injunction, the  
7 Appointment Order again warned Defendants of the consequences of failing to  
8 comply. Specifically, the Appointment Order stated,

9 [i]n the event Action Security remains in violation of the Injunction  
10 Order, the Receiver shall take reasonable and appropriate steps to cure  
11 those violations as soon as possible. **If the Receiver is unable to cure  
12 those violations and determines that Action Security is unable or  
13 unwilling to comply . . . the United States shall immediately seek  
14 the permanent closure of Action Security.**<sup>87</sup>

15 **e. Defendants Fail to Work with the Receiver in Violation of the  
16 Court’s Order.**

17 On April 26, 2022, Ms. Fink contacted Mr. Henke to set up an initial meeting.<sup>88</sup>  
18 During that call, Mr. Henke told Ms. Fink that he was not available for two weeks  
19 but would call to set up a meeting to take place during the week of May 9, 2022.<sup>89</sup>  
20 Mr. Henke did not call back, however, and only after calling Action Security on three  
21 occasions was Ms. Fink able to speak with Mr. Henke and arrange a meeting to take  
22 place at close of business on May 9, 2022.<sup>90</sup> When Ms. Fink called on May 9, 2022,  
23 to remind Mr. Henke of this meeting, he asked to reschedule to close of business on  
24 the following day.<sup>91</sup>

25 <sup>84</sup> Doc. 37 at 8.

26 <sup>85</sup> *Id.* at 5-6.

27 <sup>86</sup> *Id.* at 7.

28 <sup>87</sup> *Id.* at 5 (emphasis added).

<sup>88</sup> Feb. 28 Tr. at 97:1-4, 8-11; Doc. 40-1.

<sup>89</sup> Doc. 40-1.

<sup>90</sup> Feb. 28 Tr. at 97:1-4; Doc. 40-1 at 2.

<sup>91</sup> Doc. 40-1 at 2.

1 Ms. Fink and her assistant met with Mr. Henke on May 10, 2022. During this  
2 meeting, Mr. Henke showed Ms. Fink his accounting system, which consisted of  
3 using the desktop version of QuickBooks to generate employee paychecks and  
4 withhold those employees' federal taxes.<sup>92</sup> Mr. Henke did not use the other features  
5 of QuickBooks which would have allowed him to track invoices, debts, and profits  
6 and losses.<sup>93</sup> Also, because Mr. Henke used only the desktop version of the software,  
7 as opposed to a cloud-based system, Ms. Fink was unable to easily access the  
8 software remotely.<sup>94</sup>

9 Mr. Henke also explained that he used the point-of-sale platform Square<sup>95</sup> to  
10 process credit card payments and a Wells Fargo account for cash and check  
11 payments.<sup>96</sup> Payments from Square, which were the majority of payments received  
12 by Action Security, were then transferred to the Wells Fargo account as needed to  
13 pay rent, bills, and payroll.<sup>97</sup> The rest remained in the Square account to protect the  
14 money from creditors,<sup>98</sup> and was used to pay expenses through a debit card linked  
15 to that account.<sup>99</sup>

16 At the initial meeting on May 10, 2022, Ms. Fink gave Mr. Henke instructions  
17 to give her materials she needed to fulfill her obligations as a receiver.<sup>100</sup> The items  
18 Ms. Fink asked for included keys and alarm access codes for the Action Security shop;  
19 logins and passwords to Action Security's QuickBooks, Square, and Wells Fargo  
20 accounts; a summary of Action Security's inventory; a daily sales report; and a list  
21 of Action Security's invoices and debts.<sup>101</sup> Ms. Fink also told Mr. Henke to install

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23 <sup>92</sup> Feb. 28 Tr. at 98:10-102:17.  
24 <sup>93</sup> Feb. 28 Tr. at 98:25-99:6, 101:25-6.  
25 <sup>94</sup> *Id.* at 109:8-13.  
26 <sup>95</sup> Square is a business that allows retailers to process credit card payments through a retail  
27 terminal or other digital reader connected to a smart phone or tablet. See SQUARE,  
28 <https://squareup.com/us/en> (last accessed Jan. 5, 2024).

<sup>96</sup> Feb. 28 Tr. at 99:13-23, 100:1-4.

<sup>97</sup> *Id.* at 102:15-18; *see also* Doc. 68, Ex. 7.

<sup>98</sup> Mar. 1 Tr. at 54:9-12.

<sup>99</sup> Feb. 28 Tr. at 102:18-22.

<sup>100</sup> *Id.* 104:1-4; Doc. 40-1.

<sup>101</sup> Feb. 28 Tr. at 105:11-19, 116:24-117:5, 169:8-13; Doc. 40-1. Access to these items was  
28 explicitly ordered by the District Court in its order appointing Ms. Fink. Doc. 37 at 5-6.

1 RemotePC on his computer so she could access his desktop version of QuickBooks  
2 from her office.<sup>102</sup> Mr. Henke said that he would “get it done.”<sup>103</sup>

3 Ms. Fink then met with Mr. Henke later in May at a Wells Fargo Bank in order  
4 to get access to his bank account.<sup>104</sup> At that point in time, the account had no money,  
5 and Mr. Henke had overdrawn it several times.<sup>105</sup> The account statements also  
6 showed that Mr. Henke had made withdrawals from the account of approximately  
7 “\$7,000, \$8,000” soon after the receivership began.<sup>106</sup> The account statements did  
8 not show any similar patterns of withdrawals before this.<sup>107</sup> Mr. Henke told Ms. Fink  
9 that the withdrawals were for cashier’s checks to pay vendors; however, he was  
10 unable to provide her with copies of those checks.<sup>108</sup>

11 Ms. Fink returned to Action Security on June 9, 2022, to log into QuickBooks  
12 from Mr. Henke’s desktop computer and access information necessary to prepare  
13 delinquent tax returns.<sup>109</sup> Working with Mr. Henke to access his financial records,  
14 Ms. Fink “pulled everything off QuickBooks” so that she could “prepare all of the  
15 940s, all of the 941s that were due.”<sup>110</sup> That evening, Mr. Henke texted Ms. Fink:  
16 “Thank you for your help today. I appreciate the help.”<sup>111</sup>

17 Ms. Barr, Ms. Fink’s assistant, used Mr. Henke’s payroll history to prepare  
18 every delinquent employment and unemployment tax return up to the first quarter  
19 of 2022 – the most recent deadline.<sup>112</sup> Ms. Barr then brought Mr. Henke the  
20 completed returns to review and sign, which he did.<sup>113</sup> As a result of these filings,  
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22 <sup>102</sup> Feb. 28 Tr. at 109:7-18. RemotePC is software that allows a user at one internet-  
23 connected computer to access and run an internet-connected computer in another location.  
See REMOTEPIC, <https://www.remotedesktop.com/> (last accessed Jan. 5, 2024).

24 <sup>103</sup> Feb. 28 Tr. at 105:21.

25 <sup>104</sup> *Id.* at 105:25-106:1-11.

26 <sup>105</sup> *Id.* at 106:13-16.

27 <sup>106</sup> *Id.* at 106:17-107:2.

28 <sup>107</sup> *Id.* at 157:9-13.

<sup>108</sup> *Id.* at 106:23-25.

<sup>109</sup> *Id.* at 107:7-108:2. RemotePC access had not been provided.

<sup>110</sup> *Id.* at 107:20-108:2; Mar. 1 Tr. at 34:5-8.

<sup>111</sup> Doc. 68, Def. Ex. D.

<sup>112</sup> Feb. 28 Tr. at 107:20-108:9.

<sup>113</sup> *Id.* at 38:18-19, 199:14-16; Doc. 40-1 ¶ 19.

1 the IRS determined that Action Security owed \$1,893,951.33 in unpaid employment  
2 taxes and \$2,189.64 in unpaid unemployment taxes.<sup>114</sup>

3 This was the apex of Mr. Henke's cooperation with Ms. Fink and the last  
4 substantive action Ms. Fink was able to accomplish as Receiver. Despite her request,  
5 Mr. Henke failed to provide Ms. Fink with all of the items she requested during their  
6 initial meeting.<sup>115</sup> As a result, Ms. Fink was not able to prepare Action Security's  
7 corporate income tax returns because she had no data on the business's income.<sup>116</sup>  
8 Her lack of access also meant that she could not prepare the employment and  
9 unemployment tax returns that came due after the first quarter of 2022.<sup>117</sup>

10 In its Appointment Order, the District Court directed Ms. Fink to file periodic  
11 status reports.<sup>118</sup> In her first status report on June 24, 2022, Ms. Fink stated that in  
12 her professional opinion Mr. Henke showed "no desire to become whole on his  
13 federal tax debt," noting that it took multiple phone calls with Mr. Henke to arrange  
14 both her initial meeting in May 2022 and the follow-up meeting in June 2022.<sup>119</sup> Ms.  
15 Fink also described how Mr. Henke had failed to complete the "simple accounting  
16 tasks" she had instructed him to complete,<sup>120</sup> and had not given her the keys and  
17 codes to Action Security, nor had he given her passwords or completed an  
18 inventory.<sup>121</sup> In addition, Ms. Fink reported that Mr. Henke continued to  
19 misappropriate nearly all the federal taxes withheld from his employees'  
20 paychecks,<sup>122</sup> and further warned the District Court that Mr. Henke's  
21 unresponsiveness "may make this receivership economically unfeasible."<sup>123</sup>

22 <sup>114</sup> Doc. 68, Govt. Exs. 4 and 5.

23 <sup>115</sup> Feb. 28 Tr. at 111:17-22.

24 <sup>116</sup> *Id.* at 111:1-15.

25 <sup>117</sup> *Id.* 109:19-110:9.

26 <sup>118</sup> Doc. 37 at 9. The order directed a Status Report to be filed at the end of three months,  
six months, 12 months, 18 months, and 24 months after entry of the order.

27 <sup>119</sup> Doc. 39-1.

28 <sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Doc. 48-1 at 1.

<sup>123</sup> Doc. 39-1. Ms. Fink stated to the Court during the evidentiary hearing that a turning point  
for a company often occurs between three and six months of engagement. *See* Feb. 28 Tr.  
at 155:4-5. At that point, it becomes clear, "[t]hey either follow up or they avoid." Feb. 28  
Tr. at 155:8.

1           On July 12, 2022, Plaintiff moved for an injunction to permanently close Action  
2 Security and enjoin Mr. Henke from starting a new business.<sup>124</sup> In its motion,  
3 Plaintiff argued that it had already tried everything short of shuttering the business,  
4 yet Defendants' lawbreaking persisted.<sup>125</sup> Plaintiff asked the Court to (1) hold  
5 Defendants in contempt of the Stipulated Injunction, (2) dissolve Action Security,  
6 and (3) enjoin Mr. Henke from owning or operating another business for 10 years.<sup>126</sup>  
7 Shortly thereafter, Action Security missed the deadline to file a second quarter  
8 employment tax return.<sup>127</sup>

9           Mr. Henke submitted an affidavit on August 16, 2022, disputing the assertions  
10 made in Ms. Fink's status report and asking for more time to resolve the matter.<sup>128</sup>  
11 Mr. Henke asked the Court to deny the United States' motion, claiming that: (1)  
12 Action Security had filed all 941 tax returns; and (2) Action Security was current on  
13 its third quarter 941 taxes.<sup>129</sup> Mr. Henke claimed that Action Security's sales had  
14 increased "at the rate of 40%-50%...[a]llowing opportunity to repay IRS debt."<sup>130</sup>  
15 Mr. Henke also reported that prior to Ms. Fink's appointment, he had been  
16 "attempt[ing] to find legal and accounting support without any success."<sup>131</sup>

17           After reading Mr. Henke's affidavit, Ms. Fink proposed a new arrangement to  
18 him: If Mr. Henke gave the receivership another try, as he said he would, then he  
19 could work with her assistant, Ms. Barr, instead of Ms. Fink.<sup>132</sup> Ms. Fink saw her  
20 assistant as "the calming factor" and hoped that communicating through Ms. Barr  
21 would help compel Mr. Henke to take action.<sup>133</sup>

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<sup>124</sup> Doc. 40.

<sup>125</sup> Doc. 87 at 18.

<sup>126</sup> Doc. 40.

<sup>127</sup> *Id.* Ex. 4 at 84-85; Feb. 28 Tr. at 50:3-12.

<sup>128</sup> Doc. 43.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Feb. 28 Tr. at 114:14-25.

<sup>133</sup> *Id.* at 153:23-154:4.

1       On Thursday, August 18, 2022, two days after Mr. Henke submitted his  
2 affidavit, Ms. Barr called Mr. Henke to remind him of the items that Ms. Fink still  
3 needed.<sup>134</sup> In a follow-up email sent that same day, Ms. Fink listed 10 action items  
4 for Mr. Henke to complete, including numerous QuickBooks-related matters, access  
5 to the Square payment system, keys and an access code to the Action Security  
6 building, emailed daily sales reports, and a completed inventory.<sup>135</sup> Ms. Barr also  
7 volunteered her office's IT personnel to assist Mr. Henke with restoring his  
8 computer, which Mr. Henke said had been down since July 15, 2022.<sup>136</sup>

9       Ms. Barr asked for the items to be completed by close of business Monday,  
10 August 22, 2022.<sup>137</sup> Mr. Henke missed this deadline.<sup>138</sup> Consequently, Ms. Barr  
11 emailed Mr. Henke that day to remind him of the things that she needed done.<sup>139</sup>

12       On August 23, 2022, Ms. Barr spoke with Mr. Henke.<sup>140</sup> During that  
13 conversation, Mr. Henke informed Ms. Barr that he had completed several of the  
14 items, including creating a backup copy of his QuickBooks, generating a payroll  
15 summary, paying his second quarter 2022 unemployment taxes, providing a login  
16 for the Square account, and cutting a key to the Action Security building and  
17 arranging for a new alarm access code.<sup>141</sup> However, neither Ms. Fink nor Ms. Barr  
18 ever received any of these materials from Mr. Henke despite his representation to  
19 Ms. Barr that he would send them the following day.<sup>142</sup> Reminder emails and phone  
20  
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22       <sup>134</sup> *Id.* at 168:24-25-169:1-23.

23       <sup>135</sup> Doc. 68, Ex. 9.

24       <sup>136</sup> *Id.*; Feb. 28 Tr. at 170:1-24.

25       <sup>137</sup> Feb. 28 Tr. at 171:21-22.

26       <sup>138</sup> *Id.* at 172:20-25-173:1-16.

27       <sup>139</sup> Doc. 68, Ex. 10.

28       <sup>140</sup> Doc. 68, Ex. 11.

29       <sup>141</sup> *Id.*

30       <sup>142</sup> Feb. 28 Tr. at 175:23-179:25, 181:11-22. A backup QuickBooks copy was apparently  
31 provided to Ms. Fink by Mr. Henke; however, the file was inaccessible. *Id.* at 176:13-22. In  
32 addition, Mr. Henke did ultimately provide a password for the Square account. However,  
33 because two-factor authentication was needed to remotely log in, attempts by Ms. Fink and  
34 Ms. Barr to access the Square information required Mr. Henke to forward them a randomly  
35 generated authentication code. After initially providing the information, Mr. Henke stopped  
36 providing Ms. Fink and Ms. Barr with the authentication code.

1 calls from Ms. Barr on August 25, 28, and 29, 2022, failed to produce the entirety of  
2 the requested information.<sup>143</sup>

3 Ms. Fink filed her second status report on September 23, 2022.<sup>144</sup> This report  
4 presented the same negative outlook toward Defendants' ability or willingness to  
5 comply with the terms of the injunction. According to Ms. Fink, Mr. Henke

6 [showed no] willingness to cooperate with [Ms. Fink], adopt proper  
7 accounting practices, and ultimately ensure that his federal taxes are  
8 reported and paid on time. Since May, [Mr. Henke] has persistently  
failed to complete the often-simple assignments [Ms. Fink] gave him,  
usually without so much as requesting an extension.<sup>145</sup>

9 Mr. Henke's unresponsiveness and non-compliant behavior were consistent, despite  
10 reminders and requests from Ms. Fink and Ms. Barr.<sup>146</sup> Without access to Mr.  
11 Henke's QuickBooks, Ms. Fink reported that she would not be able to prepare returns  
12 and did not expect his returns to be filed on time.<sup>147</sup> Ms. Fink also informed the  
13 District Court that Mr. Henke's business "appear[ed] to be insolvent," based on Mr.  
14 Henke going over a month without paying his salaried employees and overdrawing  
15 "his only bank account 6 times since May [2022]."<sup>148</sup> And again, Ms. Fink put the  
16 District Court and Mr. Henke on notice that she did not think the receivership was  
17 feasible and that it should not continue due to Mr. Henke's refusal to cooperate.<sup>149</sup>

18 The parties appeared on November 30, 2022, for a scheduled evidentiary  
19 hearing on Plaintiff's Motion for Sanctions to Dissolve Action Security.<sup>150</sup> Mr. Henke  
20 asked to postpone the hearing, claiming that he had an intestinal flu and 102-degree  
21 fever.<sup>151</sup> Mr. Henke also represented to the District Court that he had hired a  
22 Colorado-based company, Financial Integrity, "to help me get all my ducks in a

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23 <sup>143</sup> Doc. 68, Exs. 12, 13, 15.

24 <sup>144</sup> Doc. 48.

25 <sup>145</sup> Doc. 48-1.

26 <sup>146</sup> *Id.*

27 <sup>147</sup> *Id.*

28 <sup>148</sup> *Id.*

<sup>149</sup> *Id.* Ms. Fink could not prepare Action Security's corporate income tax returns since she  
had no data on the business's income. Feb 24. Tr. at 111:2-112:5. Nor could she prepare the  
employment and unemployment tax returns that came due after the first quarter of 2022.  
*Id.* at 108:2-111:16.

<sup>150</sup> Doc. 55.

<sup>151</sup> November 30, 2022 Hearing Transcript 2:21-3:17 (hereinafter "Nov. 30 Tr.")

1 row”<sup>152</sup> and that he planned to bring on an accountant for the same reason.<sup>153</sup> The  
2 District Court granted Mr. Henke a one-time continuance but cautioned, “I’m not  
3 feeling well,’ isn’t going to work another time.”<sup>154</sup> The Court also again admonished  
4 Mr. Henke to start communicating with Ms. Fink “a lot.”<sup>155</sup> Mr. Henke agreed to do  
5 so.<sup>156</sup>

6 Mr. Henke did not follow through on his representation to the District Court.  
7 A series of emails from Ms. Barr to Mr. Henke between December 7, 2022, and  
8 January 17, 2023, went unanswered.<sup>157</sup> Ms. Barr left phone messages with Mr. Henke  
9 on December 14, 2022, and January 17, 2023, that went unreturned.<sup>158</sup> She left a last  
10 phone message with Mr. Henke’s mother in mid-February 2023 requesting the  
11 authentication code for the Square login so that she could “update the financial  
12 information.”<sup>159</sup> Mr. Henke did not return that message.<sup>160</sup>

13 Ms. Fink filed her third status report on March 23, 2022. In that report, Ms.  
14 Fink repeated what she had previously told the District Court about Mr. Henke’s  
15 failure to work with her. Specifically, Ms. Fink stated that Mr. Henke continued to  
16 withhold information, reform his business, follow directions, or otherwise work  
17 with Ms. Fink or Ms. Barr.<sup>161</sup> Ms. Fink stated that her office had had no out-of-court  
18 correspondence with Mr. Henke since August 2022.<sup>162</sup> Because of Mr. Henke’s  
19 refusal to work with her or Ms. Barr, Ms. Fink gave her notice of resignation from  
20 the receivership, effective April 21, 2023.<sup>163</sup>

### 21 III. APPLICABLE LAW

22 Internal Revenue Code § 7402 grants district court’s jurisdiction “to make

23 <sup>152</sup> *Id.* at 5:8-17.

24 <sup>153</sup> *Id.* at 5:16-17.

25 <sup>154</sup> *Id.* at 9:14-15.

26 <sup>155</sup> *Id.* at 8:25-9:19.

27 <sup>156</sup> *Id.* at 9:20-21.

28 <sup>157</sup> Doc. 68, Exs. 17-20; *see generally* Feb. 28 Tr. at 190-198.

<sup>158</sup> Doc. 68, Ex. 20; Feb. 28 Tr. at 197:7-13.

<sup>159</sup> Feb. 28 Tr. at 205:5-10.

<sup>160</sup> *Id.* at 205:12-13.

<sup>161</sup> Doc. 73.

<sup>162</sup> Doc. 73-1.

<sup>163</sup> *Id.*

1 and issue in civil actions, writs and orders of injunction, and of ne exeat republica,  
2 orders appointing receivers, and such other orders and processes, and to render such  
3 judgments and decrees as may be necessary or appropriate for the enforcement of  
4 the internal revenue laws.”<sup>164</sup> Section 7402(a) “was intended to provide the district  
5 courts with a full range of powerful tools to ensure the enforcement of both the spirit  
6 and the letter of the internal revenue laws.”<sup>165</sup> The statute “has been construed  
7 broadly, to allow courts the full panoply of remedies necessary to effectuate the  
8 enforcement of federal tax laws.”<sup>166</sup>

9       The Ninth Circuit has held that “[t]he standard requirements for equitable  
10 relief need not be satisfied when an injunction is sought to prevent the violation of  
11 a federal statute which specifically provides for injunctive relief.”<sup>167</sup> Because  
12 § 7402(a) grants the court injunctive power, it is likely that the government need  
13 only show that an injunction is appropriate for the enforcement of the internal  
14 revenue laws, without reference to the traditional equitable factors.<sup>168</sup> Courts that  
15 have taken this approach have held that injunctive relief is appropriate if the  
16 defendant is reasonably likely to violate the federal tax laws again.<sup>169</sup> In similar  
17 contexts, the Ninth Circuit has instructed courts “predicting the likelihood of future  
18 violations[] to assess the totality of the circumstances surrounding the defendant  
19 and his violations.”<sup>170</sup>

20       Because neither the Supreme Court nor the Ninth Circuit Court of Appeals has  
21 provided express guidance regarding the standard applied to requests

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22       <sup>164</sup> 26 U.S.C. § 7402(a).

23       <sup>165</sup> *United States v. Raymond*, 78 F. Supp. 2d 856, 877 (E.D. Wis. 1999).

24       <sup>166</sup> *United States v. Bartle*, No. IP01-0768, 2002 WL 75437, at \*4 (S.D. Ind. Jan. 16, 2002).

25       <sup>167</sup> *Trailer Train Co. v. State Bd. of Equalization*, 697 F.2d 860, 869 (9th Cir. 1983).

26       <sup>168</sup> *United States v. Stoll*, No. Civ. C05-0262, 2005 WL 1763617, at \*8 (W.D. Wash. June 27, 2005) (citing *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002) (holding, in a bankruptcy case, that where a statute, such as IRC § 7402(a), grants the court injunctive power, the court is not “confined to traditional equity jurisprudence”)).

27       <sup>169</sup> See *United States v. Harkins*, 355 F. Supp. 2d 1175, 1180 (D. Or. 2004) (citing *United States v. Kaun*, 827 F.2d 1144, 1150 (7th Cir. 1987)).

28       <sup>170</sup> See *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); see also *La Quinta Worldwide, LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir. 2014) (“It is important to consider the totality of circumstances bearing on whether a permanent injunction is appropriate equitable relief.”).

1 for injunctive relief pursuant to § 7402(a), however, other courts have analyzed  
2 such requests under the equitable factors traditionally applied to a request for a  
3 permanent injunction.<sup>171</sup> These factors are: (1) the likelihood of substantial and  
4 immediate irreparable injury; (2) the inadequacy of remedies at law; (3) actual  
5 success on the merits of a claim; (4) the balance of hardships between the plaintiff  
6 and defendant; and (5) the public interest.<sup>172</sup> When the government is a party, the  
7 balance of hardships and public interest factors merge.<sup>173</sup>

8 Out of an abundance of caution, the Court evaluates the appropriateness of a  
9 permanent injunction under both standards.

10 **IV. ANALYSIS**

11 **a. The Court Finds the Government's Evidence and Witnesses to Be  
12 Credible and Does Not Find Mr. Henke to Be a Credible Witness.**

13 In making its findings, the Court has considered the evidence in the record,  
14 including the sworn declarations filed in conjunction with this motion and others,  
15 as well as the sworn testimony and exhibits submitted during the evidentiary  
16 hearing. The Court finds the government's witnesses' statements and declarations,  
17 given under penalty of perjury and supported by admissible evidence, to be credible.

18 The Court does not find Mr. Henke to be credible and has discounted his  
19 evidence and testimony accordingly. Mr. Henke failed to abide by the clear mandates  
20 of the Stipulated Injunction despite his agreement to do so. He failed to heed the  
21 District Court's warnings as to what might happen were he not to work with the  
22 Receiver despite his claim that he understood the Court's admonition. And most

23  
24 <sup>171</sup> See, e.g., *United States v. China China Inc.*, No. C 11-2065 SC, 2011 WL 4404941, at \*4-7  
25 (N.D. Cal. Aug. 31, 2011) (noting lack of clarity regarding proper standard and analyzing  
26 motion for default judgment seeking injunctive relief under the standard set forth in  
U.S.C. § 7402(a) and under traditional equitable principles), adopted by, 2011 WL 4404154  
(N.D.Cal. Sept. 21, 2011). *U.S. v. Merritt*, 2011 WL 5026074, at \*6 (E.D.Cal., 2011).

27  
28 <sup>172</sup> *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *Amoco Prod. Co. v. Village of  
Gambell*, 480 U.S. 531, 546 n.12 (1987) ("The standard for a preliminary injunction is  
essentially the same as for a permanent injunction with the exception that the plaintiff must  
show a likelihood of success on the merits rather than actual success.").

<sup>173</sup> *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,  
556 U.S. 418, 435 (2009)).

1 importantly, throughout the course of this litigation he has made statements – both  
2 unsworn and sworn – to the District Court, this Court, the IRS, and others that are  
3 simply inconsistent with the facts.

4 For instance, at the Court’s November 30, 2022 Status Conference, Mr. Henke  
5 informed the Court that he had met with Ms. Barr and that he had “made all of the  
6 payments” and “done everything [he] possibly could.”<sup>174</sup> However, for the first  
7 quarter of 2022, Mr. Henke paid only \$343.74 of the required \$4,757.18 owed in  
8 employment taxes.<sup>175</sup> Moreover, at that point in time, Mr. Henke had not provided  
9 passwords to Ms. Fink to permit her to access his accounts or to use those accounts  
10 to pay taxes owed, had not prepared an inventory, had not responded to Ms. Fink or  
11 Ms. Barr’s requests for pertinent financial information, and had avoided meeting and  
12 communicating with Ms. Fink and Ms. Barr.<sup>176</sup> Each of these actions was required  
13 under the Stipulated Injunction and Appointment Order.

14 Mr. Henke’s false statements about his cooperation with Ms. Fink and Ms. Barr  
15 continued at the evidentiary hearing. Mr. Henke testified under oath that he had  
16 timely provided Ms. Fink and Ms. Barr everything they had requested except for the  
17 “alarm code and a key to the front door.”<sup>177</sup> As explained above, this statement is  
18 false.<sup>178</sup>

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21 <sup>174</sup> Nov. 30 Tr. at 4:7-8.

22 <sup>175</sup> Doc. 40-1. This payment would have been due April 30, 2022, only six months prior to  
the Court’s Status Conference.

23 <sup>176</sup> See, e.g., Feb 28 Tr. at 178:20-179:1 (Testimony from Ms. Barr that Mr. Henke never  
provided Ms. Fink with a key or building alarm code for the Action Security location); see  
also *id.* at 116:17-22 (Testimony from Ms. Fink that she did not have keys or alarm access);  
*id.* at 105:24-25 (testimony from Ms. Fink that “[t]o this day, there is still no inventory[.]”);  
*id.* at 108:13-109:1, 116:17-22, 187:7-188:16 (Testimony from Ms. Fink and Ms. Barr detailing  
how Mr. Henke stopped providing Ms. Fink with the dual-factor authentication code login  
needed to access Square account); see also Status Reports at Docs 39-1, 48-1, and 73-1; Doc.  
68, Exs. 17-20 (emails from Ms. Barr to Mr. Henke attempting to obtain information); Doc.  
48-1 (status report by Ms. Fink describing difficulties communicating with Mr. Henke and  
failures by Mr. Henke to provide QuickBooks account access, copies of incoming and  
outgoing mail, daily accounting of Action Security’s revenue and expenditures, or a business  
inventory).

24 <sup>177</sup> Feb. 28 Tr. at 23:7-8.

25 <sup>178</sup> See *supra* notes 114, 133-142.

1       Mr. Henke claimed that one of the reasons for his failure to provide  
2 information to Ms. Fink and Ms. Barr as required under the receivership order was  
3 because, despite being “available seven days a week,” Ms. Fink and Ms. Barr had  
4 “not reached out to [him] at all saying anything that they need[ed] from [him].”<sup>179</sup>  
5 However, this claim by Mr. Henke attempting to place blame on Ms. Fink and Ms.  
6 Barr for not communicating with him is not supported by the record. The credible  
7 testimony from Ms. Fink and Ms. Barr, supported by multiple government exhibits,  
8 was that they attempted to contact Mr. Henke through both phone and email (and  
9 were occasionally successful) and requested specific items from him on multiple  
10 occasions.<sup>180</sup>

11       In addition to the government’s evidence, Mr. Henke’s own testimony and  
12 exhibits undermine his claim about being available and not being told what was  
13 needed. In one text message with Ms. Fink following his June 9, 2022 meeting, Mr.  
14 Henke wrote that “his homework is done,” a clear indication to this Court that he  
15 had in fact been given a list of tasks to be completed.<sup>181</sup> Contemporaneous  
16 statements recorded by Ms. Barr and contained in emails sent to Mr. Henke show  
17 that Mr. Henke was provided with lists of tasks to complete and acknowledged those  
18 tasks.<sup>182</sup> When asked about communications with Ms. Barr, Mr. Henke admitted that  
19 she had “reached out to [him]” and that “[s]he’s emailed [him].”<sup>183</sup>

20       The facts similarly do not support Mr. Henke’s testimony concerning his entry  
21 into the Stipulated Injunction. Mr. Henke testified that he signed the injunction  
22 under some duress after being “very intimidated” by an IRS agent who showed up at  
23 his door unannounced and said, “sign this.”<sup>184</sup> He also testified that he did not have  
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25       <sup>179</sup> *Id.* at 30:19-20.

26       <sup>180</sup> *See supra* note 176.

27       <sup>181</sup> Doc. 68, Ex. D.

28       <sup>182</sup> *See id.*, Ex. 9 (“Scott, these are the items we discussed earlier this morning in our phone  
29 conversation...”).

30       <sup>183</sup> Feb. 28 Tr. at 22:16-25.

31       <sup>184</sup> Mar. 1 Tr. at 80:1-3.

1 a “clue what [the stipulation] was.”<sup>185</sup> This testimony is undermined by the  
2 considerable back-and-forth between Mr. Henke and the IRS regarding the proposed  
3 stipulation and Mr. Henke’s own email containing his signature on the stipulation.

4 The IRS sent Mr. Henke a letter and proposed stipulation on September 3,  
5 2019. Mr. Henke wrote back that he was “interested in resolving this issue and  
6 signing the injunction with a few changes.”<sup>186</sup> He then went on to detail several  
7 specific changes to the proposed injunction that he wanted to see, including the dates  
8 on which payments were to be made, changes to the time period for inspection of  
9 books, and the lifting of liens that had been placed on Action Security.<sup>187</sup> The IRS  
10 agreed to some changes and sent a modified proposed injunction back to Mr. Henke  
11 on September 10, 2019.<sup>188</sup> On September 12, 2019, Mr. Henke replied with additional  
12 proposed changes, referencing specific line items he was seeking to renegotiate.<sup>189</sup>  
13 The IRS again agreed to some of Mr. Henke’s proposed changes and sent him a third  
14 draft of the proposed injunction that same day.<sup>190</sup> When the IRS had not heard back  
15 from Mr. Henke by September 16, it emailed again asking for an update. Mr. Henke  
16 replied several hours later saying that he had been working in a location in Alaska  
17 without cell service and that he would try to review the proposed injunction “later  
18 today” or “tomorrow.”<sup>191</sup> He then signed the proposed stipulation and sent via email  
19 a photo of his signature on September 19, 2019.<sup>192</sup>

20 The record makes clear that Mr. Henke was clearly well-informed about the  
21 contents of the proposed injunction he signed, and that nothing about his contacts  
22 with the IRS could be considered intimidating. Mr. Henke had versions of each draft  
23 of the proposed injunction for several days. He appears to have used that time to  
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25 <sup>185</sup> *Id.* at 80:9-10.

186 *Doc.* 16-1 at 7.

187 *Id.*

188 *Id.* at 6.

189 *Id.* at 5.

190 *Id.* at 4-5.

191 *Id.* at 4.

192 *Doc.* 68, Ex. 22 at 1.

1 review the proposed injunction because he made multiple requests for specific  
2 changes to the document. He then sent an email containing a photograph of his  
3 signature on the stipulation's signature page. It is not credible for Mr. Henke to  
4 testify under oath that he didn't have a "clue" what was in the stipulation or that he  
5 was somehow forced into signing it.

6 Mr. Henke has also hedged and been inconsistent about other aspects of his  
7 case, further undermining his credibility. To convey the financial straits he found  
8 himself in following his divorce, Mr. Henke repeatedly highlighted the measures he  
9 took to downsize his business and the short time frame he had to accomplish those  
10 actions. However, on each occasion, the size of his inventory, the amount of time to  
11 accomplish the move, and the space into which he moved all materially varied.<sup>193</sup>

12 Mr. Henke also failed to provide consistent information about his purported  
13 retention of various professionals to assist him in this matter. Of greatest concern  
14 was Mr. Henke's statement to the District Court in November 2022 that he had in  
15 fact retained a financial services firm to assist him.<sup>194</sup> Mr. Henke subsequently told  
16 Ms. Barr<sup>195</sup> and testified before this Court<sup>196</sup> that he had hired or was in the process

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17 <sup>193</sup> Compare Mar. 1 Tr. at 6:5-6 ("I moved 30,000 feet into 2,300 feet") with Feb. 1. Tr. at  
18 36:16-20 ("I put 50,000 feet in 2,800 feet of locations" and "I'm sitting in a 2,200 square-  
19 foot place with 30,000 feet of inventory") with Feb. 1 Tr. at 164:3-5 ("Did I also tell you, I  
20 had to move my company, in less than 20 days, from 18,000 feet into 2,300 feet" with Doc.  
43 at 1 ("Action moved 30000 square feet of inventory, vehicle, equipment and furniture  
into 2700 square feet in less than 10 days.")).

21 <sup>194</sup> Nov 30 Tr. at 5:10-6:11 (statement by Mr. Henke to the District Court that he had "hired  
[Financial Integrity] to try and get [him] back in line" and further description of  
communications with three possible lawyers).

22 <sup>195</sup> Feb 28 Tr. at 190:19-24 ("Scott, per Judge Holland's instructions, we met in court on  
Wednesday, November 30, 2022. He requested that you communicate with Lisa. He also  
asked that you provide her with the contact's name at the financial firm you stated you  
hired. It has been eight days, and we are notifying you that you have not complied with the  
judge's orders."); *id.* at 197:15-22 ("Scott, I just left a voicemail message for you at 3:14 p.m.  
on your cell, 907-227-2911. I've sent you two emails, December 7th and 14th, and left a  
voicemail message for you on December 14th, and I have not heard back from you. Judge  
Holland instructed you to communicate with Lisa and provide her with a contact name at  
the financial firm you hired. Neither Lisa nor I have heard from you or your new financial  
firm.").

23 <sup>196</sup> See Mar. 1 Tr. at 73-98 (Discussion of different individual attorneys, financial firms, IRS  
agents, and payments); *id.* at 22:4-22. ("I'm in the process of hiring a company called Focus  
Financial, which is a local company that writes checks that will handle all my 941s, all my  
payroll, all my taxes, and complete everything that is taking time away from me servicing

1 of hiring professional assistance to help him resolve his tax problems. However, the  
2 record does not contain any evidence of the hiring of any financial services firms  
3 until May 16, 2023.<sup>197</sup> Yet even when Mr. Henke provided this evidence, he  
4 simultaneously represented to the Court that he was still seeking to “obtain a  
5 company to assist [him] in resolving [his] debts.”<sup>198</sup> Mr. Henke’s statements  
6 regarding his attempts to retain legal counsel were similarly contradictory and  
7 unsupported by documentary evidence.<sup>199</sup>

8 In addition, while attempting to explain his failure to communicate with Ms.  
9 Fink and Ms. Barr following the November 30, 2022 Status Conference, Mr. Henke  
10 provided multiple shifting justifications, none of which satisfactorily explained his  
11 failure to comply with the District Court’s direct admonition to him that he start  
12 communicating with Ms. Fink “a lot.”<sup>200</sup> As it related to email communications, Mr.  
13 Henke first claimed that he did not receive emails sent by Ms. Barr because they  
14 were sent to the email “shenke@actionsecurity,” an email account he was “not

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15 our customers. I've got a company called Phoenix that is wanting to do a retroactive filing  
16 for a program called ERC, which is employment retention credit, to where credits are given  
17 for our entire 2020 and 2021 payroll. And this is a program that's being given out by the  
18 United States of America, and they are willing to work with me on that. I have communicated  
19 to a number of companies that said that the receivership is not your friend. These are  
20 professional companies that do these jobs. They have looked at the documentation and was  
21 trying to see if they could contact the IRS to take it over. And due to the fact that it's in court,  
22 they were not able to do it, but they were very willing and said that they could handle this  
23 and gets my books in line and get back in line with the IRS.”).

24 <sup>197</sup> Mr. Henke provided a letter dated May 16, 2023, stating that “Integrity Financial  
25 Associates (“IFA”) has been contracted by Action Security, Inc. to help resolve their federal  
26 tax issues.” Doc. 88-1.

27 <sup>198</sup> Doc. 88 at 1.

28 <sup>199</sup> Mr. Henke repeatedly asserted that he had hired or was attempting to hire an attorney to  
29 help him resolve his tax problems. None of those attempts bore fruit, though, and the record  
30 does not contain any documentary evidence to support Mr. Henke’s statements that he had  
31 spent over \$10,000 attempting to hire various attorneys. See Doc. 16-1 at 7 (2019 email from  
32 Mr. Henke to the IRS stating that he had “spoken with a number of attorneys and [hadn’t  
33 decided if he could] afford to proceed forward with their help”); Feb. 28 Tr. at 7:20-8:8  
34 (“Your Honor, I tried to obtain representation for two months. I hired a company, paid  
35 \$5,000 to them, and less than two weeks ago, they told me they couldn’t represent me  
36 because the case was in court. I then proceeded to find another attorney that I gave money  
37 -- \$5,000 to as well, and he told me that he couldn’t represent me because of where it was  
38 at in the court session. I went to the Anchorage Bar Association, the Alaska Bar Association,  
39 everywhere, trying to find someone to represent me, and I think that you’re aware that  
40 there’s a shortage of attorneys. All of the attorneys that were practicing this type of stuff  
41 have quit or are not back practicing at this point in time or overloaded with cases. So I am  
42 by myself at this point in time.”).

43 <sup>200</sup> Nov. 30 Tr. at 8:25-9:19.

1 checking at [the] time.”<sup>201</sup> When informed by the Court that some of the emails were  
2 sent to the account that he testified he was regularly using,  
3 “dispatch@actionsecurity,” Mr. Henke pivoted and said that he was out of the office  
4 during that time, bedridden with COVID.<sup>202</sup> Mr. Henke then admitted that he  
5 “obviously” had spoken to Ms. Barr about the contents of those emails, thereby  
6 admitting that he had received and reviewed them, but added that “if” they had  
7 spoken, he was not “100 percent coherent at the time” because he was “under the  
8 weather.”<sup>203</sup> He then added that his failure to respond and cooperate was the result  
9 of legal advice he had been given.<sup>204</sup>

10 Mr. Henke told a similar story when it came to attempts by Ms. Barr to speak  
11 to him. Mr. Henke said that he had not received any of the calls Ms. Barr had left  
12 following the November 30 Status Conference, but then conceded that Ms. Barr had  
13 “left messages.”<sup>205</sup> Mr. Henke did not have an answer for why he failed to respond  
14 to those calls.<sup>206</sup>

15 This record leaves the Court with a firm conviction that Mr. Henke’s testimony  
16 regarding his actions in this matter is simply not credible. Mr. Henke has failed to  
17 abide by his promises and representations to the District Court, has repeated false  
18 statements about his interaction with the Receiver, and has been inconsistent as to  
19 other material matters in this case. Accordingly, the Court places little to no weight  
20 in the testimony of Mr. Henke at the evidentiary hearing or in the supporting  
21 documentation provided by him during this litigation.

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22  
23 <sup>201</sup> Mar. 1 Tr. at 47:18-20.  
24 <sup>202</sup> *Id.* at 69:3-9, 69:17-22. The Court notes that Mr. Henke communicated with the IRS in  
25 2019 about the stipulated injunction using his shenke@actionsecurity email account.  
26 However, when asked about why he did not respond to Ms. Barr’s emails in August and  
27 November 2022, Mr. Henke testified that he did not recall seeing any of them because it was  
28 sent to the “shenke” account, which he does not regularly check “due to the fact that [he’s]  
never at his desk anymore.” *Id.* at 67:19-24. Mr. Henke testified that the account he was  
primarily using in 2022 was dispatch@actionsecurity, and that it was the one he was “most  
likely to receive emails at.” *Id.* at 68:12-14.  
<sup>203</sup> *Id.* at 69:17-22.  
<sup>204</sup> *Id.* at 47:23-48:2.  
<sup>205</sup> *Id.* at 48:7-16.  
<sup>206</sup> *Id.* at 48:21-22.

**b. Plaintiff Has Met the Standard for Granting a Permanent Injunction.**

Plaintiff has provided sufficient evidence showing that a permanent injunction is warranted. Plaintiff has shown that a permanent injunction is appropriate for the enforcement of the internal revenue laws, and that a permanent injunction is warranted based on the traditional equitable factors.

In determining the appropriateness of a permanent injunction for the enforcement of the internal revenue laws, the Court considers the totality of the circumstances, including the following factors: (1) the gravity of harm caused by the offense; (2) the extent of the defendant's participation, and his degree of scienter; (3) the isolated or recurrent nature of the infraction and the likelihood that the defendant's customary business activities might again involve him in such transaction; (4) the defendant's recognition of his own culpability; and (5) the sincerity of his assurances against future violations.<sup>207</sup> As detailed herein, the Court finds that each of these factors weighs strongly in Plaintiff's favor.

**i. The Gravity of the Harm Caused by Defendants' Violation of the District Court's Order Is Significant.**

The first factor the Court considered is the harm caused by Defendants' conduct. Defendants have failed to pay nearly all their unemployment, employment, and corporate taxes since 2014.<sup>208</sup> As a result, according to the IRS, Action Security owes \$1,896,140.97 to the United States in unpaid taxes.<sup>209</sup> Defendants' continued refusal to comply with the Court's orders has caused that figure to balloon to \$4,467,738.53 when accounting for penalties and interests,<sup>210</sup> and that debt appears to be growing unabated.

<sup>207</sup> *Harkins*, 355 F. Supp. 2d at 1181 (citing *United States v. Raymond*, 228 F.3d 804, 813 (7th Cir. 2000)); *Murphy*, 626 F.2d at 655.

<sup>208</sup> Doc. 87 at 9.

<sup>209</sup> Doc. 68, Ex. 5.

210 Doc. 45 at 2-3.

1           The Court notes that Mr. Henke confidently maintained during the evidentiary  
2 hearing that he could pay off his debt and rebound his company. Mr. Henke testified  
3 that “customers are coming back”<sup>211</sup> and that he can “pretty much” earn whatever it  
4 takes to square his debts.<sup>212</sup> However, Mr. Henke admitted that he had no strategy  
5 to pay off what he owed, much less the additional taxes that may have accrued since  
6 the commencement of this proceeding.<sup>213</sup>

7           Moreover, Mr. Henke’s confidence flies in the face of the record in this case.  
8 Defendants have consistently failed to pay their required employment,  
9 unemployment, and income taxes since 2014. This failure to pay accruing taxes or  
10 to attempt to make good on amounts past due exists even though Mr. Henke claimed  
11 that business was increasing following the COVID-19 pandemic with the return of  
12 customers, a portfolio of statewide clients, large corporate clients who he claims  
13 generate revenues of “40 to 50 thousand dollars” per year, and new “lucrative”  
14 revenue streams creating “automotive keys to the tune of \$300 to make a key.”<sup>214</sup>  
15 However, according to Ms. Fink, in actuality Action Security was “insolvent...because  
16 it’s not making enough money to support anybody.”<sup>215</sup>

17           Mr. Henke’s only evidence of future financial solvency and ability to pay his  
18 taxes was a spreadsheet showing that credit card receipts from January 1, 2023, to  
19 February 28, 2023, were 33.5% higher in 2023 than in 2022.<sup>216</sup> That may be so.  
20 However, as Plaintiff pointed out, it fails to prove the business grew more profitable  
21 in 2023 and does not account for inflation nor does it prove that total revenue  
22 increased. Further, the data compares only the first two months of 2023 to the entire  
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24           <sup>211</sup> Mar. 1 Tr. at 28:24, 25:21-22.

25           <sup>212</sup> *Id.* at 27:1-7; *see also id.* at 56:7-9 (“And I’m telling you I’m on target, and I told you that  
when we first spoke, is that I am bound and determined to pay back everything I owe.”).

26           <sup>213</sup> *Id.* at 45:1-4.

27           <sup>214</sup> *Id.* at 62:2-63:6.

28           <sup>215</sup> Feb. 28 Tr. at 122:10-12. During the time that Ms. Fink has access to Action Security’s  
finances, she observed that it made a profit of \$23,000, but that Mr. Henke had personal  
expenses of \$26,000, putting him in a \$3,000 hole. *Id.* at 122:4-7. As a result, Mr. Henke  
had multiple overdrawn checks from his Wells Fargo account. *Id.* at 106:14-17.

29           <sup>216</sup> Doc. 68, Ex. G.

1 previous year. This brief snapshot of revenue into one account is of limited value to  
2 the Court and is overcome by the bleak financial picture for Action Security painted  
3 by the evidence in this case. The first factor, therefore, weighs in Plaintiff's favor.

4 **ii. The Defendant Is Aware of His Obligations Under the Law  
5 and Has Willfully Violated the Court's Order.**

6 The second factor the Court considers is the extent of Defendants'  
7 participation and their degree of scienter. Mr. Henke is the sole owner and operator  
8 of Action Security, and thus any failure to file or pay taxes for nine years is a direct  
9 result of his inaction. The Court finds Mr. Henke was intimately aware of his  
10 violations and understood he was conducting his business in violation of IRS tax laws  
11 and warnings.

12 As detailed above, the IRS has attempted since 2016 to bring Defendants into  
13 tax compliance via myriad efforts. Mr. Henke agreed to the Stipulated Injunction  
14 directing his compliance in 2019. The District Court found Mr. Henke in contempt  
15 in 2021 and appointed a receiver to bring him into compliance. In November 2022,  
16 the District Court admonished Mr. Henke to work with the Receiver. And at the  
17 evidentiary hearing, Mr. Henke admitted to not paying his taxes or complying with  
18 the Stipulated Injunction because he prioritized paying creditors first.<sup>217</sup> The second  
19 factor thus weighs in favor of Plaintiff.

20 **iii. Defendants Are Likely to Continue to Break the Law and  
21 Violate the District Court's Order.**

22 The third factor involves the frequency of the infraction, i.e., whether it was  
23 isolated or is recurrent in nature, and the likelihood that Defendants will continue  
24 to violate the tax laws and the Stipulated Injunction. The frequency of the  
25 Defendants' failure to file or pay taxes has persisted for nine years, making it highly  
26 recurrent in nature. Given the prolonged, consistent duration of tax avoidance, and  
27 Mr. Henke's willingness to continue to avoid paying taxes during the pendency of

28 <sup>217</sup> Feb. 28 Tr. at 19:2-7; *see also* Mar. 1 Tr. at 55:16-56:6.

1 this action, it appears inevitable that Defendants will fail to meet their tax  
2 obligations if allowed to continue as currently structured, or if Mr. Henke is allowed  
3 to assume a role in another organization with responsibility for tax compliance.

4 Since the outset of this case, Mr. Henke has steadfastly refused to take any  
5 significant action that would demonstrate to the Court that he has a genuine desire  
6 to bring Action Security into tax compliance. For example, starting in 2016, the IRS  
7 attempted to advise him on how to follow the tax code. To this end, RO Johnson  
8 communicated with Mr. Henke in person, through letters, and telephonically about  
9 what Defendants needed to do to comply with the relevant tax laws.<sup>218</sup> Mr. Henke  
10 did not comply with RO Johnson's instructions.<sup>219</sup>

11 Mr. Henke's failure to work with RO Johnson ultimately led to referral of his  
12 case for civil injunction.<sup>220</sup> As detailed above, Mr. Henke failed to follow through on  
13 his obligations under the Stipulated Injunction. That failure led to the appointment  
14 of a receiver, Ms. Fink, and an order to cooperate. Mr. Henke failed to comply with  
15 that order.

16 Despite his repeated statements that he wished to resolve this matter, Mr.  
17 Henke appeared unable to take basic steps to bring Action Security's affairs in order.  
18 Mr. Henke disregarded essentially all of Ms. Fink's assignments: He did not give her  
19 a summary of his inventory,<sup>221</sup> a daily sales report,<sup>222</sup> remote access to  
20 QuickBooks,<sup>223</sup> consistent access to his Square account,<sup>224</sup> keys to his shop,<sup>225</sup> or a  
21 list of his invoices and debts.<sup>226</sup> As of the date of the final Status Report from Ms.  
22 Fink, he still had not accomplished any of these tasks.<sup>227</sup> Mr. Henke's actions, or lack

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23 <sup>218</sup> Feb. 28 Tr. at 43:6-15.

24 <sup>219</sup> *Id.* at 43:16-20.

25 <sup>220</sup> *Id.* at 43:21-24.

26 <sup>221</sup> *Id.* at 116:11-15.

27 <sup>222</sup> *Id.* at 179:11-17.

<sup>223</sup> *Id.* at 109:5-18.

<sup>224</sup> *Id.* at 108:12-109:1, 116:18, 120:2-8.

<sup>225</sup> *Id.* at 116:17.

<sup>226</sup> *Id.* at 116:23-117:6.

<sup>227</sup> Doc. 73-1; *see also supra* notes 174-176 and accompanying text. Mr. Henke provided brief access to his Square account but failed to respond to requests from Ms. Fink or Ms. Barr for additional information needed to maintain that access.

1 thereof, confirm Ms. Fink's conclusion that Mr. Henke was "horrible"<sup>228</sup> at  
2 communicating and that the receivership was impossible.<sup>229</sup>

3 Even when Ms. Fink was able to accomplish anything of substance on Mr.  
4 Henke's behalf, Mr. Henke failed to follow through with his legal obligations. During  
5 his initial period of cooperation with Ms. Fink, Mr. Henke gave her access to his  
6 QuickBooks, allowing Ms. Fink to prepare Defendants' Forms 940 and 941 through  
7 the first quarter of 2020. Despite this, Mr. Henke paid less than 10% of the first  
8 quarter employment taxes due on March 1, 2022.<sup>230</sup>

9 Even the District Court's admonishment at the November 30 Status  
10 Conference that it "expect[ed] there to be a lot of communication Mr. Henke,  
11 between you and Ms. Fink" failed to spur Mr. Henke into action.<sup>231</sup> The District Court  
12 plainly told Mr. Henke:

13 THE COURT: You have got to inform her as to what you're doing. You  
14 have got to put her in touch with the people that you say you're working  
15 with, because at this point, quite frankly, I'm suspicious as to whether  
16 you really have a viable operation going. You're talking about getting  
17 investors, and, sir, I'm afraid that's a pipe dream, but if it's real, you  
18 have got to be communicating what's going on to the receiver.

19 MR. HENKE: Okay.

20 Tellingly, neither Ms. Fink nor Ms. Barr have had any out-of-court contact with Mr.  
21 Henke since the District Court's advisement despite repeated emails and phone  
22 messages.<sup>232</sup>

23 Indeed, it appears as if some of the steps taken – or not taken – by Mr. Henke  
24 were taken with the express purpose of frustrating the work of the Receiver.  
25 Immediately after her appointment, Ms. Fink was able to meet with Mr. Henke and  
26 gain access to his Wells Fargo account, the account from which he told her that he  
27 paid his rent and wages. But prior to gaining that access, and shortly after Ms. Fink's

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228 Feb. 28 Tr. at 113:25.

229 Doc. 48-1.

230 Doc. 39-1 at 1.

231 Nov. 30 Tr. at 8:25-9:2.

232 Doc. 68, Exs.17-20; *see also* Feb. 28 Tr. at 116:6-10.

1 appointment, Mr. Henke withdrew a significant amount of money from the account  
2 and failed to provide Ms. Fink with documentation supporting Mr. Henke's  
3 insistence that the withdrawals were to pay vendors.<sup>233</sup> To date, no such  
4 documentation has been provided.<sup>234</sup>

5 Mr. Henke then kept the balance in the Wells Fargo account low to protect it  
6 from "people coming in and taking money out of [the] account,"<sup>235</sup> and appeared to  
7 shift most financial activity to the Square account, from which Mr. Henke could deny  
8 access to Ms. Fink by failing to provide her with the two-factor authentication code  
9 needed to remotely access that account.<sup>236</sup> The result of Mr. Henke's actions  
10 following the appointment of the Receiver was to drain and then starve the Wells  
11 Fargo account, the only account from which Ms. Fink could pay taxes owed by Mr.  
12 Henke and Action Security, thereby denying her the ability to perform a key  
13 component of her role as Receiver.

14 Mr. Henke also denied Ms. Fink access to his business. Curiously, Mr. Henke,  
15 a locksmith by trade, was never able to provide Ms. Fink with a key to his property,  
16 and claimed that he could not provide Ms. Fink with the alarm code for his security  
17 system because he had "not been able to figure out how to change the alarm code."<sup>237</sup>  
18 And Mr. Henke's repeated assertions that he was available any time to meet with  
19 Ms. Fink or Ms. Barr are undermined by the frequency with which he cancelled  
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21 <sup>233</sup> Feb. 28 Tr. at 106:13-107:5; *see also id.* at 157:13-21 (Testimony by Ms. Fink that this  
withdrawal suggested that Mr. Henke was "taking money out of the account real quick  
before a receiver comes in.").

22 <sup>234</sup> Mar. 1 Tr. at 8:2-6; *see also* Doc. 68. Exs. B, C. At the evidentiary hearing, Mr. Henke  
produced records showing a similar \$7,000 withdrawal two months after Ms. Fink's  
appointment, and testified that this withdrawal was made in order to pay a vendor. Mr.  
Henke's credibility on this issue is undermined by his ability to selectively produce  
documentation only for those issues that appear to inure in his favor, while withholding  
production for those that might undermine it. *See supra* notes 194-199 and accompanying  
text. Moreover, even if the questioned withdrawals were for the purchase of inventory, they  
would violate the injunction, which prohibited Mr. Henke from paying any commercial bills  
prior to his federal taxes. Doc. 38.

23 <sup>235</sup> Mar. 1 Tr. at 54:9-12.

24 <sup>236</sup> *See, e.g.*, Feb. 28 Tr. at 108:12-109:1, 116:17-22, 187:7-188:16 (Testimony from Ms. Fink  
and Ms. Barr detailing how Mr. Henke stopped providing Ms. Fink with the dual-factor  
authentication code login needed to access Square account).

25 <sup>237</sup> *Id.* at 23:8-9.

1 meetings, missed phone calls claiming he was unavailable due to working in remote  
2 parts of the state, or simply did not respond to email and voice message requests to  
3 communicate.

4 Mr. Henke repeatedly claimed at the evidentiary hearing that he was working  
5 tirelessly to keep his business afloat.<sup>238</sup> In Mr. Henke's view, it was more important  
6 to him to do business than it was to comply with the injunction. However, nothing  
7 precluded Mr. Henke from doing both, and indeed, much of what Ms. Fink and Ms.  
8 Barr completed on Mr. Henke's behalf and were prepared to undertake going  
9 forward – the filing of required paperwork, the implementation of accounting and  
10 inventory systems – would have freed Mr. Henke to run his business more efficiently.  
11 In the Court's view, the steps Mr. Henke took to frustrate Ms. Fink were the result  
12 of his unwillingness, rather than an inability, to get her what she needed.

13 The only step that Mr. Henke appears to have taken to address his tax  
14 compliance issues was to hire at the 11<sup>th</sup> hour a financial firm. However, the Court  
15 is not swayed by this effort. Mr. Henke told the IRS and District Court multiple times  
16 during this litigation that he either did, or intended to, hire an outside firm to assist  
17 him with his tax issues.<sup>239</sup> However, it is only when faced with the imminent  
18 possibility of closure that it appears he might actually have.<sup>240</sup> In addition, Mr.  
19 Henke has consistently failed to follow the tax laws and the District Court's orders,  
20 even when given multiple opportunities to work with Plaintiff and the resources of  
21 a qualified receiver. This abysmal track record gives the Court no confidence that  
22 Mr. Henke intends to follow through with his retained financial services firm in such  
23 a way that will result in his compliance with the tax laws and will allow him to  
24 address his debt to the United States.

25 Mr. Henke testified at the evidentiary hearing on this motion that he "was  
26 trying to comply [with the injunction] and move on with [his] life so he can get [his

27 <sup>238</sup> *Id.* at 35:1-5; Mar. 1. Tr. at 6:17, 7:6, 29:2, 49:8-14, 56:1-6.  
28 <sup>239</sup> Mar. 1 Tr. at 22:1-14; Nov. 30 Tr. at 5:10-25, 6:1-11.  
29 <sup>240</sup> Doc. 88-1.

1 tax problems] eliminated.”<sup>241</sup> However, his actions belie that testimony. Since the  
2 outset of this matter and continuing to this day, Mr. Henke has acted in ways that  
3 demonstrate to this Court that Defendants’ primary objective is avoidance of their  
4 tax problems, as opposed to their elimination. The Court finds that the third factor  
5 weighs heavily in Plaintiff’s favor.

6 **iv. Mr. Henke Has Not Acknowledged His Own Culpability.**

7 The fourth factor is Defendant’s recognition of his own culpability. While Mr.  
8 Henke has expressed in words his willingness to pay his debts and bring his company  
9 into tax compliance, his actions belie that intent. The Court has before it little to no  
10 evidence of him accepting responsibility for his actions. Rather, Mr. Henke’s  
11 statements relating to his failure to pay taxes owed are surrounded by excuses, and  
12 he has consistently blamed others – RO Johnson, Ms. Fink, Ms. Barr – for his inability  
13 to comply with the law and the orders of the District Court.

14 The most telling demonstration of Mr. Henke’s lack of recognition of his own  
15 culpability has been his response to Ms. Fink’s appointment. At the evidentiary  
16 hearing, Mr. Henke faulted the District Court for giving “Ms. Fink the receivership  
17 without [his] knowledge,”<sup>242</sup> despite having been served with a copy of the motion  
18 and the District Court’s order appointing Ms. Fink.<sup>243</sup> He went on to then assert that  
19 despite its obvious impact on his business, and the potential sanctions that could  
20 result were he not comply with the District Court’s order, he had not read the  
21 Appointment Order<sup>244</sup>

22 It would seem apparent that anyone facing a significant tax liability would  
23 welcome the opportunity to work with a court-appointed receiver to help resolve the  
24 matter. The Court will not speculate why Mr. Henke has spurned this opportunity;

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25 <sup>241</sup> Feb. 28 Tr. at 33:14-15.  
26 <sup>242</sup> *Id.* at 6:19-20.  
27 <sup>243</sup> Docs. 29, 30.  
28 <sup>244</sup> Mar. 1 Tr. at 31:14. According to Mr. Henke’s testimony at the evidentiary hearing, he  
did not read the Appointment Order when it was served on him and still “still [hadn’t] read  
it to this day. Okay?” *Id.* at 15. Mr. Henke made this assertion despite Ms. Fink’s testimony  
that she reviewed the receivership order with him “line by line.” Feb. 28 Tr. at 98:3-4.

1 however, his hostility toward Ms. Fink, her assistant Ms. Barr, and their collective  
2 assistance has been jarring and continues Mr. Henke's trend of seeking to address  
3 his tax problems by attempting to ignore them or blaming others. Mr. Henke claims  
4 his hostility toward Ms. Fink was based on her purported faults and inexperience.<sup>245</sup>  
5 However, it is apparent from Ms. Fink's resume and experience that she was more  
6 than capable of assisting Mr. Henke in this case.

7 At the evidentiary hearing, Mr. Henke sought to cast blame on Ms. Fink,  
8 criticizing her for not guiding him sufficiently through the process<sup>246</sup> or sending  
9 reminders of things he needed to accomplish.<sup>247</sup> Only on cross-examination did Mr.  
10 Henke concede that Ms. Fink did give him a "list of assignments," that he had  
11 reviewed that list, and that reminders about these actions items were sent to him on  
12 multiple occasions.<sup>248</sup> Indeed, the record shows that between their initial meeting  
13 on May 10, 2022, and the evidentiary hearing in early 2023, Ms. Fink or Ms. Barr  
14 met with Mr. Henke or communicated with him through phone, text, or email no  
15 fewer than 15 times.<sup>249</sup> Among these communications were emails that included a  
16 list of 10 specific action items Mr. Henke needed to accomplish.<sup>250</sup> The Court is  
17 uncertain how much more hand-holding could have been done in this case.<sup>251</sup>

18 Indeed, Mr. Henke appears to want it both ways. On the one hand, he criticizes  
19 Ms. Fink for not "writ[ing] [instructions] down for [him] so [he] could get a punch  
20 list done[.]"<sup>252</sup> On the other hand, when given specific tasks to get done, he fails to

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21 <sup>245</sup> Mar. 1 Tr. at 21:15-19 ("She mentioned that she's done 700, blah, blah, blah, or something  
22 along those lines, and then it later came up that this is her first receivership. And I believe  
23 that it being her first receivership, that Action Security has been a receiver of her lack of  
experience.").

24 <sup>246</sup> *Id.* at 79:18 ("I just need my hand held.").

25 <sup>247</sup> *Id.* at 20:15-22.

26 <sup>248</sup> *Id.* at 37:15-18 (Question: "You said that she verbally gave you a list of assignments that  
27 you needed to do, correct? She told you, here's X, Y and Z, do these things? Answer: She  
28 went down the list. Okay?); *see also id.* at 48:23-25 ("[T]hey sent you, a number of times, a  
list of things you had to do for them").

<sup>249</sup> Doc. 40-1; Feb. 1 Tr. at 97:2-10; Doc. 68, Exs. 9-20.

<sup>250</sup> Doc. 68, Exs. 9-11, 13, 15, 17-19.

<sup>251</sup> The Court notes that Ms. Fink and Ms. Barr even went so far as to attempt to provide IT  
help to Mr. Henke when his computer apparently crashed and he was unable to access his  
QuickBooks, an offer Mr. Henke spurned. Feb. 28 Tr. at 170:22-171:10.

<sup>252</sup> Mar. 1. Tr. at 40:23-24.

1 follow through on the assignments.

2       Mr. Henke also criticizes Ms. Fink because she only “met with [him for] three  
3 to four hours, and then sent a letter to the United States government saying that [he]  
4 need[s] to be shut down.”<sup>253</sup> In making this claim, Mr. Henke fails to appreciate that,  
5 in addition to their in-person meetings, Ms. Fink and her firm spent time preparing  
6 overdue tax returns based upon information obtained during those initial  
7 meetings.<sup>254</sup> Furthermore, the record demonstrates that Ms. Fink attempted to work  
8 with Mr. Henke to carry out the receivership order, that communications during the  
9 summer of 2022 after the initial meeting appeared to be improving,<sup>255</sup> and that some  
10 progress was made in providing information to the IRS. Moreover, when Ms. Fink’s  
11 communications broke down several months into the relationship, Ms. Fink tasked  
12 Ms. Barr with attempting “to try to move forward with this case.”<sup>256</sup>

13       Mr. Henke nevertheless insists that Ms. Fink should have spent more time  
14 with him, should have been “in his corner,” and should have “showed up at [his]  
15 office and looked [him] in the eye and said, ‘Let’s get busy.’”<sup>257</sup> But the record  
16 evidence in this case shows that Ms. Fink’s attempts to work with Mr. Henke to  
17 resolve his tax problems were reasonable. Even after filing her first status report  
18 documenting her issues with Mr. Henke and her conclusion that Mr. Henke’s  
19 business was not viable, Ms. Fink agreed to continue working with Mr. Henke  
20 following his assurances in August 2022 that he was “willing and needing to resolve  
21 this matter as quickly as possible[.]”<sup>258</sup> This representation spurred Ms. Barr’s  
22 involvement, and her repeated phone calls and emails to Mr. Henke requesting  
23 information and access, which largely went unfulfilled.<sup>259</sup>

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25       <sup>253</sup> *Id.* at 77:3-7.

26       <sup>254</sup> Feb. 28 Tr. at 107:19-108:8.

27       <sup>255</sup> Compare *id.* at 98:6-9 (“He seemed a little angry, a little upset.”) with Mar. 1 Tr. at 33:2-13.

28       <sup>256</sup> Feb. 1 Tr. at 114:14-25.

29       <sup>257</sup> Mar. 1 Tr. at 77:7-10.

30       <sup>258</sup> Doc. 43 at 3.

31       <sup>259</sup> See *supra* notes 157-160.

1           Even after being ghosted in August 2022, Ms. Barr tried a second time to work  
2 with Mr. Henke following the November 30 Status Conference.<sup>260</sup> This outreach also  
3 went unanswered despite the District Court’s stern admonition to Mr. Henke that he  
4 start communicating with Ms. Fink “a lot,” and Mr. Henke’s assurance that he  
5 would.<sup>261</sup> The Court does not fault Ms. Barr or Ms. Fink for refusing to spend  
6 additional time and resources on Mr. Henke’s case given Mr. Henke’s unwillingness  
7 to do the simple tasks asked of him, all of which were either directly ordered as part  
8 of the District Court’s order appointing the Receiver,<sup>262</sup> or clearly consistent with  
9 the duties of the Receiver.<sup>263</sup>

10           All in all, Ms. Fink and Ms. Barr did not, as Mr. Henke claims, sit back and  
11 “throw[] darts at [him].”<sup>264</sup> Rather, Ms. Fink and Ms. Barr repeatedly attempted to  
12 engage with Mr. Henke and fulfill the mandate of the District Court’s receivership  
13 order, yet Mr. Henke failed to cooperate. In light of Mr. Henke’s stonewalling, it is  
14 understandable that Ms. Fink would ultimately throw her hands up and walk away.  
15 The fault is not with Ms. Fink for failing to throw a lifeline to Mr. Henke; the failure  
16 is with Mr. Henke for not grabbing that lifeline when it came his way.<sup>265</sup> Mr. Henke’s  
17 refusal to acknowledge this while continuing to blame Ms. Fink does not indicate any  
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19           <sup>260</sup> Mar. 1 Tr. 47:6-22.

20           <sup>261</sup> Nov. 30 Tr. at 9:1-3.

21           <sup>262</sup> Compare Doc. 37 at 5 (“The Receiver shall have access and control over Action Security’s  
records, including...and electronically kept records such as those using QuickBooks.”) with  
Doc. 68, Exs. 9-13, 15, 17-20 (Emails from Ms. Barr to Ms. Henke requesting access to, among  
other things, QuickBooks backup, login and password, and access.).

22           <sup>263</sup> Compare Doc. 37 at 12 (“The Receiver may...implement such accounting and control  
procedures to facilitate the efficient and proper administration of Action Security.”) with  
Doc. 68, Ex. 9-13, 15, 17-20 (Emails from Ms. Barr to Ms. Henke requesting that an inventory  
of Action Security’s assets be completed.).

23           <sup>265</sup> The Court notes the irony of Mr. Henke’s complaints about Ms. Fink refusing to work  
with him given that nearly every stage in this case it has been Mr. Henke who has missed  
deadlines or failed to show for meetings. Mr. Henke failed to answer the Complaint. During  
Mr. Henke’s communications with the IRS about the stipulated injunction, he failed to  
respond with proposed edits to the injunction by the time he said he would. RO Johnson  
testified that Mr. Henke cancelled a meeting at the last minute and failed to follow-up like  
Mr. Henke said he would. Ms. Fink testified that it took multiple calls over several weeks to  
set up her initial meeting and follow-up meeting with Mr. Henke. Mr. Barr’s  
communications with Mr. Henke demonstrate that he consistently failed to respond to her  
requests for information despite repeated assurances that he would.

acceptance of responsibility. Factor four weighs heavily in favor of Plaintiff.

**v. Defendants Will Not Meet their Legal Obligations Going Forward.**

Finally, the fifth factor relates to the sincerity of Defendants' assurances against future violations.<sup>266</sup> As detailed above, Mr. Henke has repeatedly assured the IRS, the Receiver, and the District Court that he wanted to resolve this matter and was working diligently toward that end. For instance, in his emails with the IRS in August 2019 prior to the stipulated injunction, Mr. Henke wrote that he "plan[ned] on resolving this issue myself with your office's help."<sup>267</sup> In his declaration filed August 16, 2022, in response to Ms. Fink's first status report, Mr. Henke claimed that Action Security's sales had increased "at the rate of 40%-50%...[a]llowing opportunity to repay IRS debt."<sup>268</sup> At the November 30 Status Hearing, Mr. Henke told the District Court that he was "back on [his] feet again and...able to start getting this resolved."<sup>269</sup> At the evidentiary hearing Mr. Henke testified that he was "on target" and "bound and determined to pay back everything [he owed]."<sup>270</sup> Mr. Henke added that he would "continue to do what [he's] doing so that the company can be profitable and [he] can pay off [his] debt."<sup>271</sup>

The evidence demonstrates that what Mr. Henke has done since at least 2014 is avoid paying his taxes. And since at least 2016, he has failed to work with those who have attempted to help him resolve these issues, despite his representations to the IRS, the District Court, and this Court at every turn that that was his desire. Simply put, there is no evidence in the record of Mr. Henke making any sustained, dedicated attempt to comply with his legal obligations, comply with the obligations in the Stipulated Injunction, or comply with this District Court's orders and admonitions. And there is nothing to indicate that if given another opportunity, he

<sup>266</sup> *Harkins*, 355 F. Supp. 2d at 1181.

<sup>267</sup> Doc. 16-1 at 7.

268 *Id.*

<sup>269</sup> Nov. 30 Tr. at 4:16-17.

<sup>270</sup> Mar. 1 Tr. at 56:7-9.

<sup>271</sup> *Id.* at 85:1-2.

1 would do so.

2 Mr. Henke's actions, and in some instances his inactions, speak louder than  
3 his words and tell the Court that without stringent sanctions, future tax violations  
4 will occur and Defendants will continue to violate the Court's orders. Without  
5 evidence of any significant good faith efforts by Defendants during the four years  
6 since entry of the Stipulated Injunction, the Court struggles to see how any remedy  
7 short of shutting down Defendants' business and enjoining Mr. Henke from engaging  
8 in any other businesses that would make him responsible for tax compliance could  
9 prevent future loss. "[T]ime and experience" have demonstrated to this Court that  
10 the previous injunction was not enough to compel Mr. Henke to bring his company  
11 into tax compliance and to stop the pyramiding scheme.<sup>272</sup> The District Court has  
12 been unable to accomplish its objectives with less stringent sanctions. The fifth  
13 factor, therefore, weighs in favor of Plaintiff.

14 In sum, Plaintiff presented evidence demonstrating there is a likelihood of  
15 future tax violations by Defendants. Plaintiff estimates that, as of July 10, 2022,  
16 Defendants owe the United States Treasury approximately \$4,467,738.53,  
17 accounting for both the underlying \$1,896,140.97 in unpaid taxes and the interest  
18 and penalties that have accrued on that sum.<sup>273</sup> Because of Defendants' conduct (or  
19 lack thereof), there is no sign this amount will decrease. Plaintiff likewise presented  
20 evidence of Defendants' past conduct of knowingly and continuously acting in a  
21 manner that violates federal tax laws, despite the repercussions, offers of assistance  
22 by the IRS and the Receiver, and numerous warnings from the IRS and District Court.  
23 Plaintiff also presented evidence of Defendants' persistent and obstinate refusal to  
24 comply with both the federal tax laws, and the District Court's preliminary  
25 injunction and receivership order, again despite numerous warnings. Mr. Henke has  
26 not acknowledged the illegality of his conduct, nor has he credibly denied any of the

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28 <sup>272</sup> See *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 249 (1968).

<sup>273</sup> Doc. 45 at 2-3; Doc. 68, Ex. 5.

1 factual allegations against him. Plaintiff has therefore shown that a permanent  
2 injunction is appropriate for the enforcement of the internal revenue laws.

3 **vi. The Equitable Factors Warrant a Permanent Injunction.**

4 In addition to showing that a permanent injunction is appropriate for the  
5 enforcement of the internal revenue laws, Plaintiff has established each of the  
6 factors that would warrant a permanent injunction in equity: (1) substantial  
7 irreparable harm; (2) the inadequacy of remedies at law; (3) actual success on the  
8 merits; and (4) a balance of equities tipping in Plaintiff's favor.<sup>274</sup>

9 First, Plaintiff has shown that Defendants' activities, if not curbed, will result  
10 in substantial irreparable harm through lost revenues and interference with the  
11 proper administration of the revenue laws. Second, Defendants' failure to make any  
12 dent in their steadily growing tax debt, and their apparent unwillingness to tackle  
13 the problem despite being subject to various court orders, indicate that remedies at  
14 law are inadequate to compel Defendants' compliance with the revenue laws. Third,  
15 Plaintiff has demonstrated actual success on the merits. As detailed above, there is  
16 abundant evidence in the record of Defendants' refusal to comply with the revenue  
17 laws or to cooperate with the District Court's orders, or to otherwise reform their  
18 business in an attempt to stop pyramiding debt and repay it.<sup>275</sup> And fourth, Plaintiff  
19 has shown that the balance of hardships tips in its favor. Although the Court  
20 recognizes that Plaintiff's requested relief places a significant burden on Defendants'  
21 freedom of contract,<sup>276</sup> Defendants' own behavior—namely, their repeated violations  
22 of the revenue laws and challenges to court orders—has prompted the necessity of a  
23 severe sanction. Permanent injunctive relief advances the significant public interest  
24 in collecting and recovering tax obligations, or, in this case, imposing appropriate  
25 sanctions where Defendants have flagrantly disregarded their duty to address these

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27 <sup>274</sup> See *eBay Inc.*, 547 U.S. at 391; *Amoco Prod. Co.*, 480 U.S. at 546 n.12; *Drakes Bay Oyster*  
Co., 747 F.3d at 1092.

28 <sup>275</sup> See *supra* sections IV.iii & v.

<sup>276</sup> See *infra* Part V.a.

1 obligations.<sup>277</sup>

2 The Court therefore finds that the traditional equitable factors further  
3 establish that Plaintiff is entitled to a permanent injunction.

4 **V. SANCTIONS**

5 **a. The Court Recommends Closure of Action Security and Enjoining  
6 Mr. Henke from Controlling a Business.**

7 Having recommended that Defendants be found in contempt, the Court turns  
8 to the appropriate remedy. The government seeks a permanent injunction ordering  
9 Defendants to cease accepting new clients within 30 days, cease operating within  
10 120 days, and placement of a notice of the injunction on Defendants' store door. The  
11 government also requests that this injunction prohibit Mr. Henke from directly or  
12 indirectly owning, controlling, managing, operating, or serving as an officer or  
13 director of any business until the earlier of (1) his successful petition for relief if  
14 certain conditions are met after one year from the injunction, or (2) 10 years. Finally,  
15 the government asks that the injunction provide that Defendant be incarcerated for  
16 three or more days if he violates its terms.<sup>278</sup>

17 Mr. Henke requests the appointment of a second receiver and an opportunity  
18 to continue operating the business.<sup>279</sup>

19 The government's requested remedy is extraordinary. The Court has  
20 been able to find only a limited number of cases in which a court not only ordered  
21 an individual or entity facing similar issues to dissolve their business operation, but  
22 also enjoined any future operations.<sup>280</sup> Indeed, such an extraordinary resolution  
23 directly impacts Defendants' clients, third parties who are wholly innocent in this

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25 <sup>277</sup> See *Perez v. Ledesma*, 401 U.S. 82, 108 (1971) ("Taxes are the lifeblood of government,  
and their prompt and certain availability an imperious need.").

26 <sup>278</sup> Doc. 87 at 31-32.

27 <sup>279</sup> Doc. 88 at 1-2.

28 <sup>280</sup> See, e.g., *United States v. ITS Fin., LLC*, 592 Fed. App'x 387, 397 (6th Cir. 2014); *United  
States v. Ireland*, 2019 WL 3759533 (E.D. Mich. July 24, 2019) (permanently enjoining  
defendant from acting as tax preparer and owning and operating a tax preparation  
business); *United States v. Pugh*, 717 F. Supp. 2d 271, 302 (E.D.N.Y. 2010); *United States v.  
Franchi*, 756 F. Supp. 889, 893 (W.D. Pa. 1991).

1 matter, and also appears to run counter to the Constitutional guarantees of liberty  
2 and freedom of contract.<sup>281</sup>

3       However, as the limited case law in this area demonstrates, those guarantees  
4 are not absolute. And Defendants' conduct in this case leaves this Court no viable  
5 option but to concur with the government's proposed sanction. Mr. Henke has  
6 repeatedly violated the lawful orders of the District Court, even after being warned  
7 that failure to abide could result in the very sanction being recommended at this  
8 time. The Court finds that no lesser sanction will deter Defendants from continuing  
9 to commit willful violations of the tax laws and the District Court's orders.

10       **b. Other Sanctions Are Not Appropriate in this Case.**

11       The Court has considered other sanctions ranging from doing nothing to  
12 recommending Mr. Henke's incarceration. A recommendation to maintain the status  
13 quo ignores two obvious truths. First, Ms. Fink has provided her notice of  
14 resignation and is no longer available to serve as a receiver.<sup>282</sup> Second, such an order  
15 would grant Mr. Henke additional time to continue with his tax avoidance,  
16 rewarding him for his obstinacy and deliberate avoidance of his obligations under  
17 the law, the injunction, and the District Court's orders.

18       The appointment of a second receiver, as requested by Mr. Henke, is also not  
19 a viable option. Defendant refused to work with Ms. Fink or Mr. Barr, and since Ms.  
20 Fink's resignation, there is no evidence in the record of any meaningful attempts by  
21 Defendant to comply with the tax laws or pay what is owed. There is no evidence in  
22 the record that appointing a second receiver – a step that would amount to "do-  
23 over" – would be effective. The District Court appointed a competent and capable  
24 receiver to work with Defendants to assist with the resolution of their tax issues. As  
25 detailed above, Mr. Henke ultimately refused this help, spurned the Receiver, and  
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28<sup>281</sup> See Const. art. I, § 10.

<sup>282</sup> Doc. 73-1.

1 blamed the Receiver and the District Court for his predicament. Given Defendants'  
2 history, appointment of a second receiver is very likely to end in a similar fashion.

3 Mr. Henke also seeks to work with an outside firm. In his final briefing to this  
4 Court, Mr. Henke provided a letter from a service which appears to indicate that the  
5 service has been retained to assist with Defendants' ongoing tax problems.  
6 However, as previously stated, the apparent retention of this firm does not alter the  
7 Court's recommendation. Mr. Henke has frequently misled the Court as to his  
8 retention of professionals that he claimed were assisting him or were going to be  
9 retained to assist him.<sup>283</sup> Given Mr. Henke's record with the Receiver, the Court has  
10 doubts about whether Mr. Henke will follow through with this firm or how  
11 effectively he will be able to work with them to address his significant tax  
12 delinquency.

13 Financial penalties are an option that the Court has considered and similarly  
14 rejected. In its original motion for a show cause order filed on October 14, 2020, the  
15 government requested a per diem fine, along with compensation for costs accrued  
16 by the government because of Defendants' contemptuous behavior.<sup>284</sup> Such a per  
17 diem fine for each day a contemnor fails to comply with an affirmative court order  
18 is valid and enforceable.<sup>285</sup>

19 The Court finds that a financial penalty to induce compliance would be  
20 ineffective. This is so because Mr. Henke has already demonstrated that he  
21 prioritizes paying himself and his vendors over his taxes, even when the law and  
22 District Court tell him otherwise.<sup>286</sup> Furthermore, at best, a per diem fine would  
23 likely induce only temporary compliance before Defendants reverted to past practice

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25 <sup>283</sup> See *supra* notes 196, 199.

26 <sup>284</sup> Doc. 20 at 13. The government withdrew this request for financial penalties in its  
27 Response to Order dated January 26, 2022. Doc. 26. In that order, the District Court solicited  
soliciting "input from Plaintiff as to what action the court should take to enforce [the  
injunction.]" Doc. 25.

28 <sup>285</sup> See *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994); *United  
States v. Ayres*, 166 F.3d 991, 995 (9th Cir. 1999).

<sup>286</sup> See Feb. 28 Tr. at 19:2-7; see also Mar. 1. Tr. at 72:14-24.

1 of ignoring the Court's order, failing to pay taxes, and failing to cooperate with a  
2 receiver. The parties would then find themselves right back where they began with  
3 the filing of this motion. Moreover, where the fundamental issue is an individual's  
4 refusal to properly pay taxes owed, it makes little sense to the Court to order a  
5 person to pay money to the Court as part of a civil contempt fine, as opposed to  
6 where that money should be sent, the IRS.<sup>287</sup>

7 The Court has also considered a shorter duration for the permanent  
8 injunction, or alternative conditions for lifting of the injunction after one year. The  
9 Court finds that a shorter term for the injunction and alternative conditions are not  
10 appropriate. This is so given the duration and magnitude of the willful tax avoidance  
11 by Defendants, and Defendants' unwillingness to comply with multiple prior orders  
12 and instructions of the District Court. A 10-year injunction and the imposition of  
13 strict conditions that must be met prior to an early release from that injunction are  
14 appropriate under the facts of this case.

15 The Court has also considered incarceration as a sanction. Incarceration is an  
16 appropriate coercive sanction for civil contempt so long as "the contemnor can avoid  
17 the sentence imposed on him, or purge himself, by complying with the terms of the  
18 original order."<sup>288</sup> The government is not seeking incarceration in this civil matter  
19 and the Court is not recommending it.

20 The Court finds that anything less than the recommended sanction on these  
21 facts would undermine the authority of the District Court. On two occasions the  
22 District Court has clearly warned Mr. Henke of the consequences of failing to comply  
23 with its order. When ordering the Stipulated Injunction – to which Mr. Henke  
24 voluntarily agreed – the Court wrote that violating its order could result in Mr.  
25 Henke and Action Security being ordered to "cease doing business immediately" and

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26 <sup>287</sup> *But see United States v. Moore*, No. 16-6054, 2017 WL 3718529 at 4 (D. N.J. Aug. 29, 2017)  
27 (denying permanent injunction seeking closure of dental office in part because motion was  
28 "premature" and "cut[] off [Defendant's] only real chance to repay his and practice's  
liabilities").

<sup>288</sup> *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 635 n. 7 (1988).

1 being “permanently enjoined from forming, incorporating, or owning another  
2 business entity and working for any business in [any tax-related capacity.]”<sup>289</sup>  
3 Similarly, in the Appointment Order, the District Court wrote, “[i]f the Receiver is  
4 unable to cure those violations and determines that Action Security is unable or  
5 unwilling to comply . . . the United States shall immediately seek the permanent  
6 closure of Action Security.”<sup>290</sup>

7 It does not appear that the incentives that might motivate a businessperson to  
8 work with a receiver or otherwise take the necessary steps to comply with the law  
9 and the Court’s orders work with Mr. Henke. The initial involvement of the IRS  
10 failed. The Stipulated Injunction failed. The District Court’s receivership order  
11 failed. The filing of the government’s motion seeking closure of Defendant Action  
12 Security and a permanent injunction against Mr. Henke forbidding him from owning  
13 or operating a similar business for 10 years failed. The looming threat of this Court’s  
14 potential finding and recommendation granting the government’s motion and  
15 proposed remedy failed.

16 Nothing has prevented Mr. Henke from recognizing the seriousness of his  
17 dilemma and taking advantage of the opportunities provided to him by the IRS, the  
18 District Court, and Ms. Fink. However, since breaking off contact with the Receiver,  
19 there is nothing in the record demonstrating that Defendants have taken any steps  
20 to comply with the District Court’s orders. Defendants’ inaction has occurred in spite  
21 of the fact that *any* positive steps by Mr. Henke toward complying with the District  
22 Court’s order would likely have been viewed favorably and would in no way have  
23 harmed his position in this litigation.

24 In the Court’s view, Mr. Henke did not want to be told by anyone – the IRS,  
25 the District Court, or Ms. Fink – how to run his business. However, that is precisely  
26 what the District Court ordered. There is nothing in the record indicating that Mr.

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<sup>289</sup> Doc. 19 at 5.  
<sup>290</sup> Doc. 37 at 5.

1 Henke's mindset has changed and that any action short of what is recommended  
2 herein will be any more successful.

3 Mr. Henke expressed the opinion that, “[Action Security] is not a business that  
4 you just can dissolve.”<sup>291</sup> Unfortunately for him, that is simply not true. The District  
5 Court can dissolve Action Security for Defendants’ nine-year streak of violating IRS  
6 tax laws and failing to comply with multiple court orders. That is why this Court  
7 recommends Action Security be dissolved and Mr. Henke enjoined from running a  
8 business until Mr. Henke can demonstrate concrete actions he has taken to ensure  
9 he can comply with the tax laws.

10 **VI. CONCLUSION**

11 For nearly a decade, Defendants have defied taxation with impunity. As of July  
12 10, 2022, Action Security’s pyramiding tax debt totaled \$4,467,738.53, with no sign  
13 of decreasing despite numerous offers and directions of help from the District Court,  
14 the IRS, and the Receiver. Defendants have not shown any willingness to respect our  
15 nation’s tax laws or the District Court’s authority. And Mr. Henke’s promises of  
16 change ring hollow. Mr. Henke’s actions during this case demonstrate that he will  
17 not reform and that the Court should grant Plaintiff’s Motion for Sanctions to  
18 Dissolve Action Security.

19 Defendants have been warned countless times that Action Security may be  
20 shut down and that Mr. Henke might be enjoined from running a business if they did  
21 not comply with tax laws, work with the Receiver, or follow court orders. These  
22 warning were given upon commencement of this action by the IRS, with the filing of  
23 the Stipulated Injunction, with the Appointment Order, throughout Defendants’  
24 correspondence with Plaintiff, and by the District Court. This Court therefore sees  
25 no feasible lesser remedy at this stage.

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<sup>291</sup> Doc. 43 at 3.

1           Accordingly, this Court recommends that the District Court **GRANT** Plaintiff's  
2 Motion for Sanctions to Dissolve Action Security and **ORDER** a permanent injunction  
3 containing the following provisions:

4           1. Scott Henke and Action Security shall cease accepting new clients within 30  
5 days;

6           2. Action Security shall cease operating as a going concern within 120 days.

7           After that time, it may not, under any circumstance, perform services for  
8 existing clients, sell products, or advertise to the public;

9           3. Within three days of service of the District Court's order, Mr. Henke shall  
10 conspicuously display at Action Security's entrance a copy of this injunction  
11 and a notice that the business will close by the date ordered which shall  
12 include the following language;

13           Due to Action Security's failure to pay taxes and comply with  
14 court orders, the District Court for the District of Alaska has  
15 found Action Security and its owner, Scott Henke, in contempt  
16 of court. As a result of being found in contempt, the District  
17 Court has entered a permanent injunction against Action  
Security and Scott Henke. Action Security and Scott Henke  
shall cease accepting new clients within 30 days of the date of  
the District Court's injunction and shall close its doors within  
120 days of that injunction.

18           4. Mr. Henke shall not directly or indirectly own, control, manage, operate, or  
19 serve as an officer or director of any business until the earlier of (1) his  
20 successful petition for relief under paragraph 5; or (2) 10 years;

21           5. Mr. Henke may petition the Court for relief from this Permanent Injunction,  
22 no earlier than one year after its entry, by demonstrating that he is capable  
23 and likely to run a business in compliance with all federal tax laws. In  
24 reviewing any petition for relief, the Court may consider, among other  
25 factors, whether:

26           a. A certified public accountant approved by the Court, or by the United  
27 States, attests that Mr. Henke has implemented sufficient internal  
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controls to ensure that all future federal taxes are reported and paid on time;

- b. Mr. Henke has reported and paid his own federal income taxes, in full and on time, for the past five years;
- c. Mr. Henke has reported and paid any state and local taxes due, in full and on time, for the past five years;
- d. Mr. Henke owes no outstanding debts; and
- e. Mr. Henke has maintained a positive credit history; and

Mr. Henke violates this injunction, he shall be incarcerated for up to three years, or for as long as the contempt remains.

The Court also recommends that:

1. As recommended by Ms. Fink at Docket 48-1, the receivership ordered at Docket 37 be terminated; and
2. Ms. Fink's request to resign at Docket 73-1 be GRANTED.

DATED this 10th day of January, 2024 at Anchorage, Alaska.

s/ *Kyle F. Reardon*  
KYLE F. REARDON  
United States Magistrate Judge  
District of Alaska

## **NOTICE OF RIGHT TO OBJECT**

Under 28 U.S.C. § 636(b)(1), a district court may designate a magistrate judge to hear and determine matters pending before the Court. For dispositive matters, a magistrate judge reports findings of fact and provides recommendations to the presiding district court judge.<sup>292</sup> A district court judge may accept, reject, or modify, in whole or in part, the magistrate judge's order.<sup>293</sup>

<sup>292</sup> 28 U.S.C. § 636(b)(1)(B).

<sup>293</sup> *Id.* § 636(b)(1)(C).

1           A party may file written objections to the magistrate judge's order within 14  
2 fourteen days.<sup>294</sup> Objections and responses are limited to five (5) pages in length  
3 and should not merely reargue positions previously presented. Rather, objections  
4 and responses should specifically identify the findings or recommendations objected  
5 to, the basis of the objection, and any legal authority in support. Reports and  
6 recommendations are not appealable orders. Any notice of appeal pursuant to Fed.  
7 R. App. P. 4(a)(1) should not be filed until entry of the district court's judgment.<sup>295</sup>

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<sup>294</sup> *Id.*

<sup>295</sup> See *Hilliard v. Kincheloe*, 796 F.2d 308 (9th Cir. 1986).